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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

Joint Application of OpenMarket Inc. and Peerless Network Holdings, Inc. Requesting Exemption from California Public Utilities Code Section 854(a) or alternatively, Expedited Approval of Transfer of Control of Peerless Network of California, LLC (U-7112-C) and Airus, Inc. (U-7175-C) to OpenMarket Inc., Pursuant to California Public Utilities Code Section 854(a).

Application 21-11-__

JOINT APPLICATION OF OPENMARKET INC. AND PEERLESS NETWORK HOLDINGS, INC. REQUESTING EXEMPTION FROM CALIFORNIA PUBLIC UTILITIES CODE SECTION 854(a) OR ALTERNATIVELY, EXPEDITED APPROVAL OF TRANSFER OF CONTROL OF PEERLESS NETWORK OF CALIFORNIA, LLC (U-7112-C) AND AIRUS, INC. (U-7175-C) TO OPENMARKET INC., PURSUANT TO CALIFORNIA PUBLIC UTILITIES CODE SECTION 854(a)

**PUBLIC VERSION
[EXHIBITS C AND D CONFIDENTIAL]**

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November 18, 2021

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Application 21-11-__

JOINT REQUEST FOR EXEMPTION FROM PUBLIC UTILITIES CODE SECTION 854(a), AND IF NOT GRANTED, EXPEDITED APPROVAL OF APPLICATION FOR TRANSFER OF CONTROL OF PEERLESS NETWORK OF CALIFORNIA, LLC (U-7112-C) AND AIRUS, INC. (U-7175-C, U-1348-C) TO OPENMARKET INC., PURSUANT TO PUBLIC UTILITIES CODE SECTION 854(a)

**PUBLIC VERSION
[EXHIBITS C AND D CONFIDENTIAL]**

I. INTRODUCTION AND SUMMARY OF REQUESTED RELIEF

Pursuant to Section 854(a) of the California Public Utilities Code and Article 2 and Rules 2.1 and 3.6 of the California Public Utilities Commission’s (“CPUC” or “Commission”) Rules of Practice and Procedure (“Rules”), Peerless Network Holdings, Inc. (“Peerless Holdings” or “Transferor”) and OpenMarket Inc. (“OpenMarket” or “Transferee”) (collectively, “Applicants”) submit this application (“Application”) to request that the Commission grant authority to enable Applicants to consummate a transaction whereby OpenMarket will acquire Peerless Holdings and its subsidiaries. Through this transaction, OpenMarket will hold a 100% indirect interest in Peerless Network of California, LLC (U-7112-C) (“PNC”) and Airus, Inc. (U-7175-C) (“Airus”) (collectively “Licensees”).¹ As discussed in more detail below, Licensees are the holders of Certificates of Public Convenience and Necessity (“CPCN”) issued

¹ Transferor, Transferee and Licensees are collectively referred to as the “Applicants” herein.

by the CPUC to provide limited facilities-based, resold competitive local exchange telecommunications service and interexchange service.²

On October 29, 2021, Peerless Holdings and OpenMarket entered into an Agreement and Plan of Merger pursuant to which OpenMarket will acquire Peerless Holdings (“Transaction” or “Proposed Transaction”). The acquisition will occur through a merger of a special purpose subsidiary of OpenMarket with and into Peerless Holdings, with Peerless Holdings as the surviving entity. As a result of this merger, Peerless Holdings will become a wholly owned direct subsidiary of OpenMarket, and PNC and Airus will become indirectly wholly owned by OpenMarket. Pre- and post-transaction organization charts are attached hereto in Exhibit E.

Applicants respectfully request that the Commission determine that this Transaction meets the “public interest” standard set forth in Public Utilities Code Section 853, thereby permitting the Commission to exempt any public utility from Public Utilities Code Section 854(a) transfer of control requirements.³ In particular, the Applicants submit that the Transaction will strengthen the financial position of Licensees by providing access to capital from new funding sources, enabling accelerated investment in the companies’ networks and the deployment of expanded services to customers. As a result, Licensees would be better positioned to be able to meet the needs of their customers and to compete for new customers. Thus, the infusion of new capital would drive growth that can strengthen the companies and enhance competition in the marketplace. In addition, the Proposed Transaction would enable

² Airus also is a registered VoIP provider in the state. *See* VoIP Registration of Airus, Inc., U-1348-C (approved March 30, 2015). Additionally, Wavenation, LLC, a registered VoIP provider affiliated with the Licensees, is included in the transaction. *See* VoIP Registration of Wavenation, LLC, U-1365-C (approved June 1, 2015). In accordance with CPUC practice, Airus and Wavenation will notify Communications Division of the indirect transfer of control of their VoIP registrations, U-1348-C and U-1365-C, respectively, from Peerless Holdings to OpenMarket. A copy of both Airus’ and Wavenation’s VoIP registrations are attached hereto as Exhibit H.

³ Pub. Util. Code § 853.

the improvement and expansion of products and services available to the client bases of both Licensees and OpenMarket. In particular, the Proposed Transaction would combine Licensees' voice-service infrastructure and extensive expertise in the U.S. telecommunications industry with the global distribution channels available to OpenMarket and its core expertise in messaging platforms and other IP-based communication channels, facilitating greater efficiency and enablement of new offerings. Finally, the Proposed Transaction will supplement Licensees' existing management team with the managerial capabilities and resources of OpenMarket. This infusion of additional expertise will help steer the companies toward a long-term growth strategy for its core business.

In addition to satisfying that public interest standard, other factors support an exemption for this case under Section 853(b). The Transaction will effectuate a transfer of control with no impact to Licensees' operations and no disruption to services and will be seamless to customers. Should the Commission apply the Section 853(b) exemption, it will enable the Transaction to close on an expedited basis, thereby allowing Licensees to promptly realize the many benefits of this Transaction and better serve their customers. Furthermore, Licensees currently have no residential end user customers in California, and therefore the Transaction will plainly not impair or jeopardize adequate service to Californians at just and reasonable rates as a matter of ordinary course. Accordingly, this Transaction is in the public interest and should qualify for the Section 853(b) exemption from the transfer of control requirements set forth in Section 854(a).

In the event that the Commission instead determines that a full Section 854(a) review of the Transaction is necessary, Applicants, in the alternative, seek expedited review and approval of the Transaction. The same public interest benefits outlined above would apply to a Section

854(a) review: namely, the Transaction will not disrupt Licensees' daily operations; it will provide funding for accelerated investment in the company's networks and the deployment of expanded services to customers; and it will not hamper competition nor result in an increase in rates or changes to terms and conditions of service – neither customers nor employees of Licensees would be impacted by the Transaction. As such, Applicants submit that there is no need for a hearing as there are no disputed factual or legal matters, and that this matter is appropriate for expedited approval.

Importantly, because the proposed change in ownership will occur at the holding company level and will not disrupt any of the operations or the legal entities of the Licensees, the Proposed Transaction will not be apparent to customers. The Licensees will continue to provide high-quality communications services to customers without interruption. Further, OpenMarket has no plans to discontinue any existing services or to terminate agreements currently in place with Licensees' customers as a result of the Transaction. The Transaction will not result in a change of carrier for any customers. OpenMarket has no plans to change the Licensees' current terms, rates and conditions of service, and there will be no need to change any billing systems or operational support systems. Any such changes that may be implemented after closing will be done with careful planning and execution in the normal course of business operations, and in accordance with applicable legal and regulatory requirements and customer contract provisions. Licensees have no plans at this juncture to change their corporate names, reduce service offerings, increase rates, or otherwise materially modify the terms and conditions of service, their billing systems, or other customer service functions as result of this Transaction. Thus, the Transaction leaves little to review by CPUC staff or discuss at a hearing.

The Transaction will not adversely affect Customers of the Licensees in California; however, a delay in approving the Transaction could delay the Transaction's benefits to Licensees' current and future California customers. Accordingly, Applicants respectfully request that the Commission proceed with its Section 854(a) review of this Application on an expedited basis and without a hearing.

II. DESCRIPTION OF THE APPLICANTS AND DESCRIPTION OF LICENSEES' SERVICES

A. Transferor and Licensees (Rules 2.1(a), 3.6(a))

PNC, a California company, holds a CPCN in California to provide limited facilities-based and resold competitive local exchange and interexchange services.⁴ PNC is authorized to provide local exchange service in the service territories of AT&T California, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California, Inc.⁵ PNC has revenue in California associated with access and wholesale services. PNC has interconnection agreements with incumbent local exchange carriers AT&T California, Frontier, and SureWest Telephone. PNC has eight employees in California.

Airus, a Delaware company, holds a CPCN to provide limited facilities-based and resold local exchange and interchange telecommunications services in California.⁶ Airus is authorized to provide local exchange service in the service territories of AT&T California, Verizon California Inc., SureWest Telephone, and Citizens Telecommunications Company of California,

⁴ See D.08-11-007 (issued Nov. 7, 2008) (approving Application 08-05-014 granting Peerless Network of California, LLC, a CPCN, U-7112-C).

⁵ *Id.*

⁶ See D.10-02-020 (issued Mar. 2, 2010) (approving Application 09-10-008 granting IntelPeer, Inc., a CPCN, (U-7175-C). Airus formerly operated as IntelPeer, Inc. See Advice Letter from Julie Musselman Oost, Vice President, Regulatory Affairs, Airus, Inc., to Director, California Public Utility Commission (May 8, 2014) (attached hereto as Exhibit G) (asking the CPUC to take note of name change from IntelPeer, Inc. to Airus, Inc.).

Inc.⁷ Airus is also registered as an interconnected VoIP provider.⁸ Airus has interconnection agreements with incumbent local exchange carriers AT&T California and Frontier. Airus does not have any end user customers or employees in California.

Licensees are direct wholly owned subsidiaries of Peerless Network, Inc., which is a direct wholly owned subsidiary of Transferor, Peerless Holdings, a Delaware corporation. Transferor Peerless Holdings does not provide telecommunications service. The following individuals or entities hold at least 10% direct or indirect interest in Transferor:

Name:	Peerless Network Holdings, Inc.
Address:	222 S. Riverside Plaza, Suite 1900 Chicago, IL 60606
Citizenship:	USA
Type of Organization:	Corporation
Principal Business:	Holding company
Percentage Held:	100% direct interest in Assignee
Name:	Adams Street 2007 Direct Fund, L.P.
Address:	c/o Adams Street Partners, LLC One North Wacker Drive, Suite 2700 Chicago, IL 60606
Citizenship:	USA
Type of Organization:	Limited partnership
Principal Business:	Investment fund
Percentage Held:	14.249% direct interest in Peerless Network Holdings, Inc.; 14.249% indirect interest in Assignee
Name:	Adams Street 2008 Direct Fund, L.P.
Address:	c/o Adams Street Partners, LLC One North Wacker Drive, Suite 2700 Chicago, IL 60606
Citizenship:	USA
Type of Organization:	Limited partnership
Principal Business:	Investment fund
Percentage Held:	16.061% direct interest in Peerless Network Holdings, Inc.; 16.061% indirect interest in Assignee
Name:	Adams Street 2009 Direct Fund, L.P.

⁷ *Id.*

⁸ *See supra* n.2.

Address: c/o Adams Street Partners, LLC
One North Wacker Drive, Suite 2700
Chicago, IL 60606
Citizenship: USA
Type of Organization: Limited partnership
Principal Business: Investment fund
Percentage Held: 14.072% direct interest in Peerless Network Holdings, Inc.; 14.072% indirect interest in Assignee

Name: John Barnicle
Address: 32662 Jeffery Drive
Dowagiac, MI 49047
Citizenship: USA
Type of Organization: Individual
Principal Business: President and Chief Executive Officer of Assignee
Percentage Held: 15.749% direct interest in Peerless Network Holdings, Inc.; 15.749% indirect interest in Assignee

Name: Adams Street Associates, LLC
Address: One North Wacker Drive, Suite 2700
Chicago, IL 60606
Citizenship: USA
Type of Organization: Limited liability company
Principal Business: Investment management
Percentage Held: 44.382% indirect interest in Assignee

B. Transferee (Rules 2.1(a), 3.6(a))

OpenMarket, a Michigan corporation, provides business communications and messaging services to mobile operators, messaging apps, banks, social networks, tech companies, and aggregators in the United States. OpenMarket leverages the global cloud communications platform of its parent company, Infobip Limited (“Infobip”), which is incorporated and headquartered in the United Kingdom. As of the date of submission of this Application, Infobip has more than 3,100 employees and more than 70 offices in over 50 countries, with annual revenues of approximately \$1,164 million.

OpenMarket offers services that leverage Infobip’s platforms for global cloud communications and customer engagement to enable businesses to build connected customer

experiences through a single interface that is scalable and easy to use. This in-house-developed, full-stack offering provides businesses with one seamless Application Programming Interface or web-based interface connection to their customers through a broad range of messaging channels, including Short Messaging Service (SMS), Rich Communication Service (RCS), voice, video, email and other chat applications.

Infobip's mobile operators portfolio combines network monitoring and filtering solutions with sales, consultancy and support services to increase revenue generated in the Application to Person (A2P) SMS messaging. Infobip's Communications Platform as a Service (CPaaS) business solutions model enables mobile network operators to create new revenue streams, accelerate time to market, and build new enterprise relations.

The company serves and partners with leading mobile operators, messaging apps, banks, social networks, tech companies, and aggregators. Key clients include internet companies and mobile apps makers, banks and financial services providers, developers, mobile network operators, technology companies, and other corporate customers.

C. Communications and Correspondence (Rule 2.1(b))

All communications with respect to this Application should be addressed or directed as set forth below:

Transferor and Licensees Contact Information:

Julie Oost
Vice President, Regulatory Affairs
Peerless Network, Inc.
222 S. Riverside Plaza, Suite 1900
Chicago, IL 60606
(312) 878-4137
regulatory@peerlessnetwork.com

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D. Certificates of Formation and Financial Statements (Rules 2.2, 3.6(d)-(g))

Pursuant to Commission Rule 2.2, copies of the Articles of Incorporation for Applicants are attached hereto as Exhibit A. On August 5, 2021 the California Secretary of State's Office issued certificates reflecting that PNC and Airus are in good standing, attached hereto as Exhibit B. A copy of the Applicants' most recent financial statements are attached hereto and filed

under seal as Confidential Exhibit C.⁹ Finally, the Purchase Agreement detailing the purchase price of the Transaction has been filed under seal and attached hereto as Confidential Exhibit D.

III. TRANSACTION OVERVIEW

A. Reasons for the Proposed Transaction (Rule 3.6(c))

As explained in greater detail in Section IV.C below, the Proposed Transaction will strengthen the financial position of the Licensees by providing them with access to capital from new funding sources enabling accelerated investment in the company's network and the deployment of expanded services to customers. As a result, Licensees would be better able to meet the needs of its customers, to expand its service offerings, and to compete for new customers. In addition, the Proposed Transaction would allow the combined company to increase and improve the products and services available to the client bases of both Licensees and OpenMarket. Moreover, because the proposed change in ownership will occur at the holding company level and will not disrupt any of the operations or the legal entities of the Licensees, the Proposed Transaction will not result in a change of carrier for any of the Licensees' customers and thus will be entirely seamless to consumers. Further, while the Proposed Transaction will maintain and enhance Licensees' capabilities, it will not cause any diminution in competition since it will not remove any competitors from the market. Finally, the Proposed Transaction will supplement Licensees' existing management team with the

⁹ The Commission's rules require that a company that intends to acquire control of a certificated company must either have at least an equivalent certificate or demonstrate that it meets the same requirements of an applicant seeking a certificate to exercise the type of authority held by the company being acquired. *See, e.g., Joint Application of GetGo Communications, LLC*, D.17-05-008, mimeo at 7 ("Documentation must indicate that the entity to whom control is transferred, meets the requirements for issuance of a CPCN."). To demonstrate that OpenMarket possesses, at a minimum, access to \$100,000 cash or cash equivalent to meet any carrier deposits of Licensees, Applicants have provided financial statements in Confidential Exhibit C. Moreover, out of an abundance of caution to ensure satisfaction of this requirement, Applicants have also provided a guaranty issued by Infobip, irrevocable for a period of twelve (12) months from the approval of the Application by the Commission.

managerial capabilities and financial and other resources of OpenMarket and Infobip. This infusion of additional expertise will help steer the Licensees toward a long-term growth strategy for their core business.

B. Description of the Proposed Transaction (Rule 3.6(b))

On October 29, 2021, Peerless Holdings and OpenMarket entered into an Agreement and Plan of Merger pursuant to which OpenMarket will acquire Peerless Holdings. The acquisition will occur through a merger of a special purpose subsidiary of OpenMarket with and into Peerless Holdings, with Peerless Holdings as the surviving entity. As a result of this merger, Peerless Holdings will be a wholly owned direct subsidiary of OpenMarket, and the Licensees will be indirectly wholly owned by OpenMarket.

Upon consummation of the transaction, the following entities or individuals will be the ultimate holders or beneficiaries of greater than ten (10) percent equity interest in Transferee:

Name:	Infobip Limited
Address:	5th Floor, 35-38 New Bridge Street London, United Kingdom EC4V 6BW
Citizenship:	England and Wales
Principal Business:	Communications and Messaging Services
Percentage Held:	100% indirect interest

Name:	Silvio Kutić
Address:	Istarska 157 Vodnjan, Croatia
Citizenship:	Croatian and Italian
Percentage Held:	49.66% indirect interest

Name:	Roberto Kutić
Address:	Istarska 157 Vodnjan, Croatia
Citizenship:	Croatian and Italian
Percentage Held:	12.52% indirect interest

Name:	Izabel Jelenić
Address:	Istarska 157

Citizenship:	Vodnjan, Croatia
Percentage Held:	Croatian 21.28% indirect interest
Name:	Richard Cashin
Address:	510 Madison Ave, FL 19 New York, NY 10022
Citizenship:	United States
Percentage Held:	Indirect voting control of 15.55% indirect interest held by funds within One Equity Partners ¹⁰
Name:	David Han
Address:	510 Madison Ave New York, NY 10022
Citizenship:	United States
Percentage Held:	Indirect voting control of 15.55% indirect interest held by funds within One Equity Partners

Corporate organization charts reflecting the current and post-Transaction ownership structures of the Licensees are attached hereto as Exhibit E.

IV. STANDARD OF REVIEW

A. Section 853(b) Exemption

Applicants respectfully request the Commission's determination that this Transaction meets the "public interest" standard set forth in Public Utilities Code Section 853. Under this authority, the Commission may "exempt any public utility" from Public Utilities Code Section 854(a) transfer of control requirements "if it finds that the application thereof with respect to the public utility . . . is not necessary in the public interest."¹¹ The Proposed Transaction is in the public interest and many factors support an exemption under Section 853(b).

¹⁰ OEP IB MidCo L.P. is a holding company that indirectly holds a 15.55% interest in OpenMarket. OEP VII GP, L.L.C. is a general partner entity that is the ultimate controlling parent of OEP IB MidCo L.P.

¹¹ Pub. Util. Code § 853(b).

First, the proposed change in ownership will occur at the holding company level and will not disrupt any of the Licensees' operations or result in a change of carrier for any of the Licensees' customers. As such, the Proposed Transaction will be entirely seamless to customers. The Licensees will continue to provide high-quality communications services to customers without interruption, and OpenMarket has no plans to discontinue any existing services or to terminate agreements currently in place with Licensees' customers in connection with the Proposed Transaction. Any future changes will be executed with careful planning and implemented in the normal course of business operations, as was the case prior to the Proposed Transaction.

Second, the Proposed Transaction will not result in any change to the service territories since Applicants plan to continue operating in the same territories.

Third, the Proposed Transaction will strengthen the financial position of the Licensees by providing them with an influx of capital from new funding sources, which will enable accelerated investment in the company's network and the deployment of expanded services to customers.

Fourth, the Commission's exemption of the Proposed Transaction under 853(b) will enable the Applicants to close the Proposed Transaction on an expedited basis and quickly realize the public interest benefits resulting from grant. Finally, in addition to the benefits outlined above, the Proposed Transaction poses no threat to competition in California as no competitor will be removed from the market and thus competition will not be diminished. In fact, the Proposed Transaction will enhance Licensees' competitive position in the market and bolster competition overall. The Proposed Transaction is therefore unquestionably in the public interest and should be found exempt from review under 854(a).

B. Section 854(a) Review

Section 854(a) requires prior authorization from the Commission before consummating a transaction that results in the merger, acquisition, or a direct or indirect change in control of a public utility. Sections 854(b) and 854(c) reviews are relevant only when a transacting utility has gross annual California revenues exceeding \$500 million. PNC's annual revenues are far less than \$500 million; in fact, it generated \$25,326,373.47 in annual revenue in 2020 within California.¹² Airus, meanwhile made \$31,592.76 in annual revenue in 2020 within California. OpenMarket does not provide regulated services and thus does not have regulated revenues in California. Thus, Section 854(b) and Section 854(c) are not applicable to this Application.

C. The Proposed Transaction Is in the Public Interest Under Section 854(a)

The primary standard used by the Commission to determine if a transaction should be approved under Section 854(a) is whether the transaction will be "adverse to the public interest."¹³

As outlined above, the Proposed Transaction furthers the public interest, convenience, and necessity. OpenMarket and its owners are managerially, technically, and financially well-qualified to complete the Proposed Transaction and assume indirect ownership and control of Licensees. OpenMarket and its owners are experienced managers and operators of communications service providers in the U.S. and globally, as demonstrated by the description above regarding the market and financial position of Infobip. The Proposed Transaction will

¹² PNC generated \$21,832,026.03 in revenue in California in 2019 and as of April 2021 had generated \$6,738,963.07.

¹³ See e.g., *Joint Application of SFPP, L.P. (PLC-9 Oil), CALNEV PIPE LINE, L.L.C., KINDER MORGAN, INC., and KNIGHT HOLDCO LLC for Review and Approval under Public Utilities Code Section 854 of the Transfer of Control of SFPP, L.P. and CALNEV PIPE LINE, L.L.C.) et al.*, D.07-05-061, at 24 (May 24, 2007).

strengthen the financial position of the Licensees by providing them with access to capital from new funding sources enabling accelerated investment in the company's network and the deployment of expanded services to customers. As a result, Licensees would be better able to meet the needs of its customers, expand their service offerings, and to compete for new customers. Thus, the infusion of new capital would drive growth that can strengthen the company and enhance competition in the marketplace.

In addition, the Proposed Transaction would allow the combined company to increase and improve the products and services available to the client bases of both Licensees and OpenMarket. In particular, the Proposed Transaction would combine Peerless Holdings' voice-service infrastructure and extensive expertise in the U.S. telecommunications industry with global distribution channels available to OpenMarket and its core expertise in messaging platforms and other IP-based communication channels, facilitating greater efficiency and the introduction of new offerings.

Moreover, because the proposed change in ownership will occur at the holding company level and will not disrupt any of the operations, change the legal entities of the Licensees, or result in a change of carrier for any of Licensees' customers, the Proposed Transaction will be entirely seamless to consumers. Licensees will continue to provide high-quality communications services to customers without interruption, and OpenMarket has no plans to discontinue any existing services or to terminate agreements currently in place with Licensees' customers in connection with the Transaction. Any future changes will be executed with careful planning and implementation in the normal course of business operations. In addition, there will be no need to change any billing systems or operational support systems before closing the Transaction. Licensees' existing customer-facing systems will remain in place after

closing, and any future system upgrades will be implemented with careful planning and execution in the normal course of business operations, and in accordance with applicable legal and regulatory requirements and customers contract provisions.

While the Proposed Transaction will maintain and enhance Licensees' capabilities, it will not cause any diminution in competition. In particular, the Proposed Transaction will not eliminate any telecommunications service provider. Moreover, neither OpenMarket nor its owners provide any competing telecommunications service or hold an attributable interest in any domestic provider of telecommunications services. Therefore, the Proposed Transaction does not pose any threat of anticompetitive effects in connection with any telecommunications service. To the contrary, by enabling Licensees to continue delivering their high-quality services and to enhance competition with other providers, the Proposed Transaction will be pro-competitive.

Finally, the Proposed Transaction will supplement Licensees' existing management team with the managerial capabilities and resources of OpenMarket and its owners. This infusion of additional expertise will help steer the Licensees toward a long-term growth strategy for their core business. Following the Proposed Transaction, Licensees will be continued to be managed by an experienced management team, enhanced with the managerial capabilities of OpenMarket and its owners. Professional biographies and resumes of the key management personnel are provided hereto in Exhibit F.

Applicants respectfully submit that the Transaction satisfies the public interest standard under Section 854(a) and should be approved, if not otherwise exempt under Section 853(b).

1. The Proposed Transaction Will be Seamless and Transparent to Customers

The Commission typically approves applications that are substantially similar to this Application under Section 854(a), often emphasizing that a transaction would be “seamless” and “transparent” from the customers’ perspective where a proposed transaction did not contemplate any changes to the rates, terms or conditions of service.¹⁴ For example, in D.93-11-002, the Commission granted the requested Section 854 authority finding that Hornblower would continue, without disruption, to meet its duties to provide service to the public and there would be no change in Hornblower’s terms or conditions of service to be reflected in its tariffs resulting from the change in control.¹⁵

As in *Hornblower*, OpenMarket has no plans at this juncture to disrupt Licensees’ business operations or adversely affect their customers in any material way, as explained in Sections I and IV.C above. The transfer of control to Transferee will be seamless and transparent to the Licensees’ customers.

¹⁴ See, e.g., *Joint Application of Pacific Pipeline System LLC, Plains All American Pipeline, L.P., and LB Pacific, L.P., for Authorization Pursuant to Public Utilities Code Section 854(a) for Transfer of Control of Pacific Pipeline System, LLC from LB Pacific, LP to Plains All American Pipeline, L.P. et al.*, D.06-09-017 (Sept. 7, 2006) (Commission authorized sale of ownership interests which resulted in indirect transfer of control of two certificated public utilities, based on finding that no change in current services or rates would result from the proposed transaction); *Application of FirstEnergy Corp. for approval of the transfer of control of First Communications, LLC (U-6837-C) to McKinley Communications, LLC pursuant to Public Utilities Code Section 854*, D.05-04-048 (April 21, 2005) (Commission authorized sale of 51% ownership interest at parent company level based on finding that after the transaction, customers would continue to receive service under the same rates, terms, and conditions that existed prior to the transaction).

¹⁵ *In re Application of Terry A. MacRae to Acquire Control of Hornblower Yachts, Inc., a Common Carrier of Passengers by Vessel, by Purchase of the Outstanding Shares of Stock owned by P. Michael Watson Pursuant to PUC Code Section 854(a)*, D.93-11-002 at *4, 1993 Cal. PUC LEXIS 859 (Nov. 2, 1993) (Findings of Fact No. 2).

V. CEQA COMPLIANCE (RULE 2.4)

CEQA applies only to “projects,” which are defined as any “activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”¹⁶ In contrast, CEQA does not apply where the “activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.”¹⁷ The CEQA Guidelines provide for an exemption “[w]here it can be seen with certainty that there is no possibility that the proposed activity in question may have a significant effect on the environment.”¹⁸

The Commission regularly concludes that a transaction involving merely the transfer of equity interests does not require CEQA review because there is no adverse effect on the environment.¹⁹ Such is the case in the present application. The Transaction does not involve the construction or relocation of facilities, but rather only a change of control of the Licensees through the transfer of equity interests in Peerless Holdings. Thus, the Commission should conclude that the Transaction does not require CEQA review because there is no possibility that the Transaction will have an adverse impact on the environment. Accordingly, pursuant to Rule 2.4 of the Commission’s Rules, Applicants request that the Commission determine that the proposed Transaction is not a “project” within the meaning of CEQA, California Public

¹⁶ See Cal. Pub. Res. Code § 21065.

¹⁷ CEQA Guidelines, § 15060(c)(2).

¹⁸ CEQA Guidelines, § 15061(b)(3).

¹⁹ See, e.g., D.93-11-002 at *4 (Commission concluded that the proposed transaction did not require CEQA review, finding that “the proposed transfer will have no adverse effect or impact on the environment because the transaction involves only the transfer of outstanding shares of stock”); D.06-09-017, mimeo at 6 (Conclusions of Law No. 3) (the proposed transaction did not require CEQA review based on the Commission’s conclusion that “[s]ince Applicants will be constructing no facilities, it can be seen with certainty that there will be no significant effect on the environment”).

Resources Code, Section 21000, *et. seq.* This Transaction does not involve or contemplate the construction or relocation of facilities; however, if Applicants engage in the construction or relocation of facilities at some future date, they will comply with all applicable CEQA regulations.

VI. REQUEST FOR EXPEDITED APPROVAL

Applicants request that the Commission approve this Application on an expedited basis. In each of the Commission decisions cited above in support of this Application, the applicants requested the same authority that Applicants here seek presently. In each case, the Commission granted the authority requested without the necessity of a hearing and within a timeframe commensurate with the one requested in this Application.²⁰

Applicants urge the Commission to similarly review this Application on an expedited basis. As described in detail above, this Transaction will be seamless to and will not have any adverse effect on any California customers, nor will it result in any change in the operations, rates, terms or conditions of service or to the construction or transfer of any facilities. As such, it is exempt from environmental review under CEQA. Further, Applicants respectfully submit that the information presented herein is sufficiently comprehensive to allow the Commission to rule on the Transaction. For these reasons and those set forth in Section I and IV above, Applicants submit that this application is appropriate for expedited approval.

Applicants desire that they be granted the authority to complete the Transaction as soon as possible. Specifically, Applicants respectfully request that the Commission complete its review and approve this Application within ninety (90) days of the filing of this Application.

²⁰ See, e.g., D.06-09-017; see also D.05-06-015, D.05-04-048, and D.93-11-002.

VII. PROCEDURAL REQUIREMENTS

A. Categorization (Rule 2.1(c))

Applicants propose that this proceeding may be best categorized as ratesetting. Although this Application will not impact Licensees' rates, terms and conditions of service for their current California customers, the definitions of "adjudicatory" or "quasi-legislative" as set forth in Rules 1.3(a) and 1.3(d) do not apply to this Application. Rule 7.1(e)(2) specifies that when a proceeding does not clearly fall within any of the categories set forth in Rule 1.3, it should be conducted under the rules for ratesetting proceedings. Additionally, Rule 7.1(e)(2), cross-referenced in Rule 1.3(f), explains, "When a proceeding does not clearly fit into any of the categories as defined in Rule 1.3(a), (d) and (e), the proceeding will be conducted under the rules applicable to the ratesetting category unless and until the Commission determines that the rules applicable to one of the other categories, or some hybrid of the rules, are best suited to the proceeding." Rule 7.1(e)(3) affords the Commission discretion to categorize a proceeding and procedural orders to enable a timely and effective resolution of the substantive issues in the proceeding.

B. Determination of the Need for Hearings (Rule 2.1(c))

The Applicants submit that hearings are not needed in this proceeding and that the information included in this Application enables the Commission to "reach findings on all issues that California statutes require the Commission to address" when evaluating a Section 854(a) application.²¹ As discussed in detail above, the Section 854(a) authority requested by

²¹ *Application of Comcast Business Communications, Inc. for Approval of the Change of Control of Comcast Business Communications, Inc.*, D.02-11-025, at 36 (Nov. 7, 2002) (in approving the acquisition of AT&T Broadband by Comcast, the Commission further explained its denial of request by protesting parties that hearings were necessary stating, "the structure of this decision, which addresses each provision of the guiding and controlling statutes, demonstrates that there is no need for hearings . . .").

Applicants will not result in operational, personnel or rate, terms and conditions of service changes, and will not have any customer-facing impact. Applicants accordingly request that the Commission evaluate their request based on this submission alone and without the need to conduct an evidentiary hearing. Applicants do not anticipate any material issues of contested fact to arise regarding this Transaction, further supporting the conclusion that hearings are not necessary.

C. Determination of Issues to Be Considered (Rule 2.1(c))

The only issue for the Commission’s consideration is whether the acquisition by Infobip of the indirect ownership interest in the Licensees to Infobip through a parent-level merger is adverse to the public interest.

D. Proposed Schedule (Rule 2.1(c))

<i>Proposed Date</i>	<i>Milestone</i>
November 18, 2021	Application Filing
30 Days after Notice in Daily Calendar	Protest Period Expiration
10 Days after Protests, if any	Reply to Protests
15 Days after Protest Deadline ²²	Prehearing Conference
10 Days after Pre-Hearing Conference	Scoping Memo Issued
80 Days after Application Filing Date ²³	Proposed Decision Issued

²² This aspect of the proposed schedule is consistent with Rule 7.2 of the Commission’s Rules of Practice and Procedure, which calls for a Pre-Hearing Conference to be held “45 to 60 days after the initiation of the proceeding or as soon as practicable after the Commission makes the assignment.”

²³ Applicants recognize that this date is only 15 days after the date set for the issuance of the Scoping Memo. Joint Applicants note, however, that by the scheduled date for the issuance of the Scoping Memo, over three weeks will have passed since the expiration of the protest period. If the initial preparation of a Proposed Decision commences as soon as the Commission is apprised that the application is uncontested, the Assigned Commissioner would have forty (40) days to prepare and serve a Proposed Decision.

90 Days after Application Filing Date ²⁴	Commission Final Decision
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E. Compliance with Procedural Requirements

For ease of convenience, this section cross-references compliance with the Rules 2 and 3, as applicable to this Application:

Rule	Requirement	Section/Exhibit
2.1(a)	Legal Name and Address; State under which Applicant Was Created or Organized	II
2.1(b)	Persons to Receive Notice	II(C)
2.1(c)	Categorization, Hearing, Issues, Proposed Schedule	VII
2.2	Formation Agreements and Qualifications to Transact Business; Certificates of Good Standing	II; Exhibit A Exhibit B
2.3/3.6(e)	Financial Statements	Exhibit C
2.4	CEQA Compliance	V
3.6(a)	Character of Business and Territory Served	II
3.6(b)	Description of Property	II; III
3.6(c)	Reasons for Transaction	III
3.6(d), (f)	Terms of Transaction	Exhibit D
	Corporate Organization Charts (Pre- and Post-Transaction)	Exhibit E
	Biographies of Key Management Personnel	Exhibit F
	Airus Name Change Notification	Exhibit G
	Airus and Wavenation VoIP Registration Certificates	Exhibit H

²⁴ Rule 14.6(c)(2) of the Commission Rules of Practice and Procedure allows the Commission to waive the period for public review and comment on proposed decision in the event that a matter is uncontested and where the decision grants the relief requested. Assuming no protests are filed and the decision grants the relief requested, Applicants request that the Commission waive the period for public comment and process this Application to accommodate the proposed schedule.

VIII. VERIFICATIONS

As stated in the attached Verifications, to the best of their knowledge, PNC and Airus are following the Commission's annual reporting, bonding, user fee, and surcharge reporting requirements, to the extent applicable and as applied to Competitive Local Exchange Carriers and Interexchange Carriers, and PNC and Airus have not previously been fined or sanctioned by the Commission.²⁵

A. Verifications Required Under D.13-05-035

Pursuant to D.13-05-035, Ordering Paragraph 14, applicants seeking or transferring a CPCN must disclose any regulatory fines, penalties, or sanctions they have received and any past bankruptcies as part of establishing the qualifications of management staff.

OpenMarket²⁶ (the transferee entity in this transaction) affirms under penalty of perjury that, to the best of its knowledge, neither it, as the transferee entity, nor its affiliates,²⁷ officers,

²⁵ See *Order Instituting Rulemaking to Revise the Certification Process*, D.13-05-035.

²⁶ Although the certification obligation in Ordering Paragraph 14 of D.13-15-035 references "applicants," Applicants understand that this obligation applies to the Transferee (OpenMarket) and not to the Transferor (PNI).

²⁷ OpenMarket's verification covers only the affiliates of Applicant that are relevant to this Transaction and OpenMarket's operational authority over the Licensees, of which, excluding direct and indirect owners, there are none.

directors, partners,²⁸ agents,²⁹ or owners (directly or indirectly) of more than ten (10) percent,³⁰ or anyone acting in a management capacity for OpenMarket: (a) held one of these positions with a company that filed for bankruptcy; (b) has been personally found liable, or held one of these positions with a company that has been found liable for fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (c) has been convicted of a felony; (d) has been the subject of a criminal referral by judge or public agency; (e) had a telecommunications license or operating authority denied, suspended, revoked, or limited in any jurisdiction; (f) personally entered into a settlement, or held one of these positions with a company that has entered into settlement of criminal or civil claims involving violations of Sections 17000, *et seq.*, 17200, *et seq.*, or 17500, *et seq.*, of the California Business & Professions Code, or of any other statute, regulation, or decisional law relating to fraud, dishonesty, failure to disclose, or misrepresentations to consumers or others; (g) has been found to have violated any statute, law, or rule pertaining to public utilities or other regulated

²⁸ Please note that Applicants' understanding of this term has been based on the common law interpretation of the term, "partner" as such term is not defined in D.13-05-035.

²⁹ Please note that D.13-05-035 does not include a definition of the term "agent," and while that term has been defined in other Commission proceedings, it has not been applied uniformly. *Compare, e.g., In re Establishing Consumer Rights and Consumer Protection Rules*, R.00-02-004, 2000 WL 346176 (Feb. 3, 2000) (defining "agent" as "a business representative whose function is to bring about, modify, effect, accept performance of, or terminate contractual obligations between a carrier and applicants or customers"), with D.07-07-043, mimeo at 104 ("Current law defines an agent as 'one who represents another, called the principal, in dealings with third persons,' and provides that all the rights and liabilities accruing to the agent accrue to the principal."), and *In re Commission's Rules of Practice and Procedure*, D.91-10-049, 1991 Cal. PUC LEXIS *704 at *4 (Oct. 23, 1991) (noting that the "agent" term is to be applied "to those members . . . who are acting in an advocacy role"). For the purpose of the D.13-05-035 verification, Applicants have interpreted "agent" as a business representative whose function is to bring about, modify, effect, accept performance of, or terminate contractual obligations between OpenMarket and its customers.

³⁰ It is within the Commission's practice to permit applicants to provide D.13-05-035 verifications for the ultimate owners of greater than ten percent interest. *See* D.20-07-020 at 12. Thus, consistent with Commission precedent, OpenMarket makes the D.13-05-035 verification on behalf of its direct owner, Infobip Limited, and individuals who ultimately own and/or control a greater than ten percent interest in OpenMarket, Silvio Kutić, Roberto Kutić, Izabel Jelenić, Richard Cashin, and David Han.

industries; or (h) entered into any settlement agreements or made any voluntary payments or agreed to any other type of monetary forfeitures in resolution of any action by any regulatory body, agency, or attorney general.

Moreover, to the best of OpenMarket's knowledge, neither it, nor any affiliate, officer, director, partner, nor owner of more than ten percent, or any person acting in such capacity whether or not formally appointed, is being or has been investigated by the Federal Communications Commission or any law enforcement or regulatory agency for failure to comply with any law, rule or order.³¹

B. Verifications Required Under D.95-12-056

Pursuant to D.95-12-056, Appendix C, Section 4.b.2, applicants seeking or transferring a CPCN must document whether any deposits are required by the Licensees and demonstrate sufficient funds to cover such deposits. Applicants affirm under penalty of perjury that no deposits are required by the Licensees.

C. Environmental and Social Justice Impacts

In February 2019, the Commission adopted an Environmental and Social Justice (ESJ) Action Plan to consider whether actions by public utilities may have disproportionate impacts upon certain communities within the state.³² ESJ communities include those which may be subject to a disproportionate impact from one or more environmental hazards, or that are likely to experience disparate implementation of environmental regulations and socioeconomic

³¹ See *Order Instituting Rulemaking to Revise the Certification Process*, D.13-05-035, Ordering Paragraph 14.

³² See *Environmental and Social Justice Action Plan*, Version 1.0 (Feb. 21, 2019), available at <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/news-and-outreach/documents/news-office/key-issues/esj/environmental-and-social-justice.pdf>. The Commission is now considering a Version 2.0 which is out for comment to interested parties and the public. The proposed goals for Version 2.0 remain the same, with the exception of Goal 7 related to workforce development, which has been revised to include an emphasis on job quality and access.

investments in their communities. With respect to these communities, the Commission must consider: 1) whether the proposed action may have a disproportionate impact on service quality and availability of service in the community, or 2) whether the proposed action may have a disproportionate safety impact or burden on the community.

Because the proposed change in ownership will occur at the holding company level and will not affect any of the operations or the legal entities of the Licensees, the Proposed Transaction will be entirely seamless to consumers. Consequently, Applicants verify that the communities that Licensees serve are not within the scope of the ESJ Action Plan.

IX. CUSTOMER NOTIFICATION

OpenMarket has no immediate plans to change Licensees' current rates or terms and conditions of services in connection with the Transaction. The Transaction will not result in any modification of Licensees' existing tariffs, price lists, or customer contracts (subject to change in the ordinary course of business). The Transaction will be seamless to customers, as they will not experience a change in carrier or any immediate changes in services, or rates, terms and conditions of service. Customer notification of the proposed change of control is not required because the Transaction is not a customer base transfer under Public Utilities Code Section 851, but an acquisition of control governed by Section 854(a).

X. CONCLUSION

For the reasons stated above, Applicants submit that the Application meets all Commission requirements under Pub. Util. Code § 854(a) for the indirect transfer of control of the certificated companies from the Seller to the Purchaser; demonstrates that the Transferee meets the Commission's financial requirements and that the Licensees will continue to meet the technical expertise requirements for certificates of public convenience and necessity; and aligns

with the achievements of the nine goals of the Commission's Environmental and Social Justice Action Plan. Applicants further submit that the public interest, convenience and necessity will be furthered by approval of this Application and respectfully request expedited approval to permit Applicants to consummate the proposed Transaction in a timely manner.

Respectfully submitted this 18th day of November 2021.

/ s /
Kristin L. Jacobson
For Peerless Network Holdings, Inc.

/ s /
Suzanne Toller
For OpenMarket Inc.

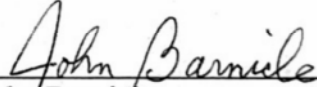
**VERIFICATION ON BEHALF OF
PEERLESS NETWORK HOLDINGS, INC.**

I, John Barnicle, state that I am President and Chief Executive Officer of Peerless Network Holdings, Inc. ("Peerless Holdings"); that I am authorized to make this Verification on behalf of Peerless Holdings.

I have read the attached Joint Request for Exemption from Public Utilities Code Section 854(A), and If Not Granted, Expedited Approval of Application for Transfer of Control of Peerless Network of California, LLC (U-7112-C) and Airus, Inc. (U-7175-C) to OpenMarket Inc., Pursuant to Public Utilities Code Section 854(A).

I affirm and declare under penalty of perjury under the laws of the State of California, including Rule 1.1 of the California Public Utilities Commission Rules of Practice and Procedure, that, based on my personal knowledge and/or on information and belief, that the statements contained therein are true and correct.

Dated: 11/17/21



John Barnicle
President and Chief Executive Officer
Peerless Network Holdings, Inc.

VERIFICATION ON BEHALF OF OPENMARKET, INC.

I, Silvio Kutić, state that I am President of OpenMarket, Inc. (“OpenMarket”); that I am authorized to make this Verification on behalf of OpenMarket.

I have read the attached Joint Request for Exemption from Public Utilities Code Section 854(A), and If Not Granted, Expedited Approval of Application for Transfer of Control of Peerless Network of California, LLC (U-7112-C) and Airus, Inc. (U-7175-C) to OpenMarket Inc., Pursuant to Public Utilities Code Section 854(A).

I affirm and declare under penalty of perjury under the laws of the State of California, including Rule 1.1 of the California Public Utilities Commission Rules of Practice and Procedure, that, based on my personal knowledge and/or on information and belief, that the statements contained therein are true and correct.

Dated: 11/18/21 _____

DocuSigned by:

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Silvio Kutić
President
OpenMarket, Inc.

EXHIBIT A

ARTICLES OF INCORPORATION OF APPLICANTS

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "AIRUS, INC.", FILED IN THIS OFFICE ON THE THIRTY-FIRST DAY OF JANUARY, A.D. 2012, AT 2:33 O'CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

4231218 8100
SR# 20164546688

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 202534160
Date: 06-22-16

**AMENDED & RESTATED
CERTIFICATE OF INCORPORATION
OF
INTELEPEER, INC.**

IntelPeer, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the "*General Corporation Law*"),

DOES HEREBY CERTIFY:

FIRST: That the name of this Corporation is IntelPeer, Inc. and that this Corporation was originally incorporated pursuant to the General Corporation Law on October 5, 2006 under the name Voex, Inc.

SECOND: That the Board of Directors duly adopted resolutions proposing to amend and restate the Certificate of Incorporation of this Corporation, declaring said amendment and restatement to be advisable and in the best interests of this Corporation and its stockholders, and authorizing the appropriate officers of this Corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

RESOLVED, that the Certificate of Incorporation of this Corporation be amended and restated in its entirety as follows (the "*Restated Certificate*");

ARTICLE I

The name of this Corporation is IntelPeer, Inc. (the "*Corporation*").

ARTICLE II

The address of the registered office of this Corporation in the State of Delaware is 2711 Centerville Road, Suite 400, in the City of Wilmington, County of New Castle 19808. The name of its registered agent at such address is Corporation Service Company.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

ARTICLE IV

A. **Authorization of Stock.** This Corporation is authorized to issue two classes of stock to be designated, respectively, common stock and preferred stock. The total number of shares that this Corporation is authorized to issue is 50,000,000 shares of Common Stock, par value \$0.0001 per share (the "*Common Stock*") and 24,520,391 shares of Preferred Stock, par value \$0.0001 per share (the "*Preferred Stock*"). The Preferred Stock shall be divided into three series. The first series of Preferred Stock shall consist of 1,280,210 shares and shall be designated "*Series A Preferred Stock*." The second series of Preferred Stock shall consist of 12,365,181 shares and shall be designated "*Series B Preferred Stock*." The third series of Preferred Stock shall consist of 10,875,000 shares and shall be designated "*Series C Preferred Stock*".

Irrespective of any contrary provisions contained in Section 242(b)(2) of the General Corporation Law, the number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares then outstanding) by the holders of shares of Common Stock voting together with the holders of shares of Preferred Stock as a single class (on an as-converted to Common Stock basis), and the holders of shares of Common Stock shall not be entitled to a separate class vote with respect thereto.

B. Rights, Preferences and Restrictions of Preferred Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Preferred Stock are as set forth below in this Article IV(B).

1. Dividend Provisions.

(a) The holders of shares of Preferred Stock shall be entitled to receive dividends, out of any assets legally available therefor, prior and in preference to any declaration or payment of any dividend (payable other than in Common Stock or other securities and rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock of this Corporation) on the Common Stock of this Corporation, at the applicable Dividend Rate (as defined below), payable when, as and if declared by the Board of Directors. Such dividends shall not be cumulative. Declared but unpaid dividends with respect to a share of Preferred Stock shall, upon conversion of such share to Common Stock, be paid to the extent assets are legally available therefor either in cash or in Common Stock (valued at the fair market value on the date of payment as determined by the Board of Directors of this Corporation). The holders of the outstanding Preferred Stock can waive any dividend preference that such holders shall be entitled to receive under this Section 1 upon the affirmative vote or written consent of the holders of at least 66% of the shares of Preferred Stock then outstanding (voting together as a single class and not as separate series, and on an as-converted basis). For purposes of this subsection 1(a), "Dividend Rate" shall mean (i) \$0.0736 per annum for each share of Series A Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to the Series A Preferred Stock) (ii) \$0.118 per annum for each share of Series B Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to the Series B Preferred Stock) and (iii) \$0.1696 per annum for each share of Series C Preferred Stock (as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to the Series C Preferred Stock).

(b) Upon the Conversion of any shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock into Common Stock as provided in Section 4, all then accrued dividends on such shares that are undeclared as of the date of Conversion shall be waived and all Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock dividends shall cease to accrue on such converted shares.

(c) So long as any shares of Series B Preferred Stock or Series C Preferred Stock shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Series A Preferred Stock or Common Stock, nor shall any shares of any Series A Preferred Stock or Common Stock of the Corporation be purchased, redeemed, or otherwise acquired for value by the Corporation (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer) until all dividends (set forth in Section 1(a) above) on the Series B Preferred Stock and Series C Preferred Stock shall have been paid or declared and set apart. The provisions of this Section 1(c) shall not, however, apply to (i) a dividend payable in Common Stock, or (ii) any repurchase of any outstanding securities of the Corporation that is approved by the Corporation's Board of Directors, with such

approval to include the approval of each of the Series B Director (as defined below) and the Series C Director (as defined below).

(d) So long as any shares of Series A Preferred Stock shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any Common Stock, nor shall any shares of any Common Stock of the Corporation be purchased, redeemed, or otherwise acquired for value by the Corporation (except for acquisitions of Common Stock by the Corporation pursuant to agreements which permit the Corporation to repurchase such shares upon termination of services to the Corporation or in exercise of the Corporation's right of first refusal upon a proposed transfer) until all dividends (set forth in Section 1(a) above) on the Series A Preferred Stock shall have been paid or declared and set apart. The provisions of this Section 1(d) shall not, however, apply to (i) a dividend payable in Common Stock, or (ii) any repurchase of any outstanding securities of the Corporation that is approved by the Corporation's Board of Directors.

(e) Subject to the foregoing clauses (a), (b), (c), and (d), after payment of dividends described in Section 1(a), any additional dividends or distributions shall be distributed out of any assets legally available therefor, payable when, as and if declared by the Board of Directors, among all holders of Common Stock and Preferred Stock in proportion to the number of shares of Common Stock that one held and/or would be held by each such holder if all shares of Preferred Stock were converted to Common Stock at the then effective conversion rate.

2. Liquidation Preference. In the event of any Liquidation Event (as defined below), either voluntary or involuntary, distribution of the proceeds of such Liquidation Event (the "Proceeds") of this Corporation to the stockholders of this Corporation shall be made in the following manner:

(a) the holders of the Series C Preferred Stock shall be entitled to receive, prior and in preference to any distribution of the Proceeds to the holders of the Series B Preferred Stock, Series A Preferred Stock and/or the Common Stock, by reason of their ownership of such stock, an amount equal to the Original Issue Price per share (as defined below) of the Series C Preferred Stock, plus all accrued or declared but unpaid dividends on such share, for each share of Series C Preferred Stock then held by them. If, upon the occurrence of such event, the Proceeds thus distributed among the holders of the Series C Preferred Stock shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then the entire Proceeds legally available for distribution shall be distributed ratably among the holders of the Series C Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive.

(b) upon the completion of the distribution to the holders of Series C Preferred required by subsection (a) of this Section 2 and before distribution of any remaining Proceeds to the holders of Series A Preferred Stock and/or the Common Stock or any further distribution of the remaining Proceeds to the holders of Series C Preferred Stock, the holders of the Series B Preferred Stock shall be entitled to receive by reason of their ownership of such stock, an amount equal to the Original Issue Price per share (as defined below) of the Series B Preferred Stock, plus all accrued or declared but unpaid dividends on such share, for each share of Series B Preferred Stock then held by them. If, upon the occurrence of such event, the remaining Proceeds available for distribution among the holders of the Series B Preferred Stock after completion of the distribution to the holders of Series C Preferred Stock required by subsection (a) of this Section 2 shall be insufficient to permit the payment to the holders of the Series B Preferred Stock of the full aforesaid preferential amounts, then the entire remaining Proceeds legally available for distribution after completion of the distribution to the holders of Series C Preferred Stock required by subsection (a) of this Section 2 shall be distributed ratably among the holders of the

Series B Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive.

(c) upon the completion of the distribution to the holders of Series C Preferred and Series B Preferred Stock required by subsections (a) and (b) of this Section 2 and before distribution of any remaining Proceeds to the holders of the Common Stock or any further distribution of the remaining Proceeds to the holders of Series C Preferred Stock and Series B Preferred Stock, the holders of the Series A Preferred Stock shall be entitled to receive, by reason of their ownership of such stock, an amount equal to the Original Issue Price per share (as defined below) of the Series A Preferred Stock, plus all accrued or declared but unpaid dividends on such share, for each share of Series A Preferred Stock then held by them. If, upon the occurrence of such event, the remaining Proceeds available for distribution to the Series A Preferred Stock after completion of the distribution to the holders of Series C Preferred Stock and Series B Preferred Stock required by subsections (a) and (b) of this Section 2, shall be insufficient to permit the payment to such holders of the full aforesaid preferential amounts, then such remaining Proceeds legally available for distribution after completion of the distribution to the holders of Series C Preferred Stock and Series B Preferred Stock required by subsections (a) and (b) of this Section 2 shall be distributed ratably among the holders of the Series A Preferred Stock in proportion to the full preferential amount that each such holder is otherwise entitled to receive.

For purposes of this Restated Certificate, "*Original Issue Price*" for the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock shall mean \$0.92 per share, \$1.4748 per share, and \$2.1194 per share, respectively (each as adjusted for any stock splits, stock dividends, combinations, subdivisions, recapitalizations or the like with respect to such series of Preferred Stock).

(d) Upon completion of the distributions required by subsections (a), (b) and (c) of this Section 2, all of the remaining Proceeds shall be distributed among the holders of Common Stock and Preferred Stock pro rata and with equal priority based on the number of shares of Common Stock held by each such holder, with the shares of Preferred Stock being treated for this purpose as if they had been converted to shares of Common Stock at the then applicable Conversion Rate.

(e) (i) For purposes of this Section 2, a "*Liquidation Event*" shall include: (A) any reorganization by way of share exchange, consolidation or merger, in one transaction or series of related transactions (each, a "combination transaction"), in which the Corporation is a constituent corporation or is a party with another entity if, as a result of such combination transaction, the voting securities of the Corporation that are outstanding immediately prior to the consummation of such combination transaction (other than any such securities that are held by an "Acquiring Stockholder," as defined below) do not represent, or are not converted into, securities of the surviving entity of such combination transaction (or such surviving entity's parent entity if the surviving entity is owned by the parent entity) that, immediately after the consummation of such combination transaction, together possess at least a majority of the total voting power of all securities of such surviving entity (or its parent entity, if applicable) that are outstanding immediately after the consummation of such combination transaction, including securities of such surviving entity (or its parent entity, if applicable) that are held by the Acquiring Stockholder; (B) a combination transaction in which stockholders of the Corporation sell or otherwise transfer for consideration voting securities of the Corporation that represent at least fifty percent (50%) of the total voting power of all then outstanding securities of the Corporation; (C) a sale, transfer, lease or other disposition of all or substantially all of the assets of the Corporation (including an exclusive license of all or substantially all of the Corporation's intellectual property); or (D) a liquidation, dissolution or winding up of the Corporation. For purposes of this Section 2, an "Acquiring Stockholder" means a stockholder or stockholders of the Corporation that (i) merges or combines with the Corporation in such combination transaction or (ii) owns or controls a majority of the voting power of another entity that merges or combines with the Corporation in such combination transaction.

For purposes of Section 2(e)(i)(B), a "combination transaction" shall not include a financing effected by the Corporation for capital raising purposes. The treatment of any particular transaction or series of related transactions as a Liquidation Event may be waived by the vote or written consent of the holders of at least 66% of the outstanding Series B and Series C Preferred Stock (voting together as a single class and not as separate series, and on an as-converted basis).

(ii) In any Liquidation Event, if any portion of the Proceeds received by this Corporation or its stockholders is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors of this Corporation (including the approval of the Series B Director (as defined below) and Series C Director (as defined below)), unless otherwise determined pursuant to the definitive agreement governing such transaction. Any securities shall be valued as follows:

(A) Securities not subject to investment letter or other similar restrictions on free marketability covered by (B) below:

(1) If traded on a securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or system over the thirty (30) trading-day period ending three (3) trading days prior to the closing of the Liquidation Event;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the thirty (30) trading-day period ending three (3) trading days prior to the closing of the Liquidation Event; and

(3) If there is no active public market, the value shall be the fair market value thereof, as mutually determined in good faith by the Board of Directors of this Corporation (including the approval of the Series B Director and Series C Director).

(B) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (A) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors of the Corporation (including the approval of the Series B Director and Series C Director).

(iii) For purposes of determining whether the holders of the Preferred Stock have received all amounts due to them under Sections 2(a), 2(b) and 2(c) above, the Proceeds distributed or distributable to such holders of Preferred Stock shall include only cash and other property which such holders of Preferred Stock receive upon the closing of the transaction constituting a Liquidation Event under Section 2(e)(i), and which cash and other property is not subject to an "earn out" or similar contingency, or subject to escrow or similar risk of forfeiture (the "*Liquidation Event Closing Proceeds*"). If subsequently the holders of Preferred Stock receive additional cash and other property through an "earn out" or a release upon the occurrence of a contingency, and which additional cash and other property is not subject to a risk of forfeiture (the "*Liquidation Event Post-Closing Proceeds*"), then at the time the holders of Preferred Stock receive the Liquidation Event Post-Closing Proceeds such Proceeds will be deemed "received" by the holders of Preferred Stock under Sections 2(a), 2(b) and 2(c) above.

(iv) Notice of Transaction. The Corporation shall give each holder of record of Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock prior written notice of

any transaction described in Section 2(e)(i) in connection with materials delivered to stockholders in connection with the approval of such transaction not later than fifteen (15) days prior to the stockholders' meeting called to approve such transaction, or fifteen (15) days prior to the closing of such transaction, whichever is earlier, and shall also notify such holders in writing of the final approval of such transaction. The first of such notices shall describe the material terms and conditions of the impending transaction and the provisions of this Section 2, and the Corporation shall thereafter give such holders prompt notice of any material changes. The transaction shall in no event take place sooner than fifteen (15) days after the Corporation has given the first notice provided for herein or sooner than ten (10) days after this corporation has given notice of any material changes provided for herein.

(v) Waiver of Notice. The holders of at least 66% of the outstanding shares of Preferred Stock may, at any time upon written notice to the Corporation, waive any notice provisions specified herein for the benefit of such holders, and any such waiver shall be binding upon the holders of all such securities.

3. Redemption.

(a) Redemption Request. Subject to the terms and conditions of this Section 3 and subject to any liquidation preference rights which may have been previously invoked under Section 2 hereof, to the extent that any outstanding shares of Series C Preferred Stock and Series B Preferred Stock have not been redeemed or converted into Common Stock at least three (3) days prior to the first date set for redemption, the Corporation shall, upon receiving a written request at any time after September 30, 2013, signed by the holders of at least 66% of the then outstanding shares of Series C Preferred Stock and Series B Preferred Stock (voting together as a single class and not as separate series) to the extent it may lawfully do so, redeem, (a "Redemption") on the date three (3) months following its receipt of such written redemption request and on the last day of each calendar quarter thereafter (each referred to hereafter as a "Redemption Date"), all the number of Series C Preferred Stock and Series B Preferred Stock that are outstanding on the date the Corporation receives such written redemption request. The Series C Redemption Price (as defined below) and the Series B Redemption Price (as defined below) shall be paid from any source of funds legally available therefor, until all outstanding shares of Series C Preferred Stock and Series B Preferred Stock to be redeemed have been redeemed or converted to Common Stock as provided in Section 4 or the request for redemption has been withdrawn or terminated as provided below.

(b) Withdrawal or Termination of Request. A redemption request may be withdrawn or terminated upon the request of the holders of at least 66% of the issued and outstanding shares of Series C Preferred Stock and Series B Preferred Stock (voting together as a single class and not as separate series) on the date of the request for withdrawal or termination, but only with respect to the shares of Series C Preferred Stock and Series B Preferred Stock that had not been redeemed in full in cash as of such Redemption Date. After any such withdrawn or terminated redemption request, the shares of Series C Preferred Stock and Series B Preferred Stock shall again be subject to redemption pursuant to this Section 3 upon the request of the holders of Series C Preferred Stock and Series B Preferred Stock as provided above.

(c) Redemption Price. Upon a Redemption of Series C Preferred Stock and the Series B Preferred Stock, the Corporation shall pay in cash to the holder of a redeemed share a sum equal to the Original Issue Price multiplied by two, plus declared but unpaid dividends (the "Redemption Price"). The Redemption Price shall be paid in cash.

(d) Holder Notice. At least fifteen (15) but no more than thirty (30) days prior to the Redemption Date, if the holders of Series C Preferred Stock and Series C Preferred Stock exercise their right of Redemption pursuant to Section 3(a) above, written notice shall be mailed, first class postage prepaid, to each holder of record (at the close of business on the business day next preceding the day on

which notice is given) of the Series C Preferred Stock and Series B Preferred Stock to be redeemed, at the address last shown on the records of the Corporation for such holder, notifying such holder of the Redemption to be effected, specifying the number of shares to be redeemed from such holder, the Redemption Date, the Redemption Price the manner in which payment shall be obtained, and calling upon such holder to surrender to this Corporation, in the manner and at the place designated, such holder's certificate or certificates representing the shares to be redeemed (the "**Holder Notice**"). Except as provided in Section 3(e), each holder of (i) Series C Preferred Stock and (ii) Series B Preferred Stock to be redeemed shall surrender to this Corporation on or after the Redemption Date the certificate or certificates representing such shares, in the manner and at the place designated in the Holder Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person or entity whose name appears on such certificate or certificates as the owner thereof in the manner specified in Section 3(c), and each surrendered certificate shall be cancelled. In the event less than all the shares represented by any such certificate are redeemed, a new certificate shall be issued representing the unredeemed shares.

(e) **Rights.** From and after the Redemption Date, unless there shall have been a default in payment of the Redemption Price, all rights of the holders of shares of Series C Preferred Stock and Series B Preferred Stock designated for Redemption in the Holder Notice as holders of Series C Preferred Stock and Series B Preferred Stock (except the right to receive the Redemption Price, upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the books of this Corporation or be deemed to be outstanding for any purpose whatsoever. If the funds of this Corporation legally available for Redemption of shares of Series C Preferred Stock and Series B Preferred Stock on the Redemption Date are insufficient to redeem the total number of shares of Series C Preferred Stock and Series B Preferred Stock to be redeemed on such date, (i) those funds that are legally available shall be used to redeem the maximum possible number of such shares ratably among the holders of such shares to be redeemed in proportion to the amounts that the Series C Preferred Stock and Series B Preferred Stock would otherwise have been entitled to receive if all amounts payable on or with respect to such Series C Preferred Stock and Series B Preferred Stock in such Redemption had been paid in full and (ii) the Corporation will make best efforts to pursue a capital raising transaction to allow it to complete such Redemption. If the Corporation is unable to raise enough capital to complete the Redemption, the Corporation may complete such Redemption in thirty-six equal monthly installments, including interest at 13% per annum. The shares of Series C Preferred Stock and Series B Preferred Stock not redeemed shall remain outstanding and be entitled to all the rights and preferences provided herein.

4. **Conversion.** The holders of the Preferred Stock shall have conversion rights as follows (the "**Conversion Rights**"):

(a) **Right to Convert.** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of this Corporation or any transfer agent for such stock, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the applicable Original Issue Price for such series by the applicable Conversion Price for such series (the conversion rate for a series of Preferred Stock into Common Stock is referred to herein as the "**Conversion Rate**" for such series), determined as hereafter provided, in effect on the date the certificate is surrendered for conversion. The initial Conversion Price per share for each series of Preferred Stock shall be the Original Issue Price applicable to such series; provided, however, that the Conversion Price for the Preferred Stock shall be subject to adjustment as set forth in subsection 4(d).

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into shares of Common Stock at the Conversion Rate at the time in effect for such series of

Preferred Stock immediately upon the this Corporation's sale of its Common Stock in a firm commitment underwritten public offering pursuant to a registration statement on Form S-1 or Form SB-2 under the Securities Act of 1933, as amended, that results in aggregate gross proceeds to the Corporation, net of underwriting expenses, in excess of \$50,000,000 (a "*Qualified Public Offering*") at an offering price per share equal to three times (3x) the Original Issue Price for the Series C Preferred. Additionally, each share of Preferred Stock shall automatically be converted into shares of Common Stock at the respective Conversion Rates at the time in effect for such series of Preferred Stock immediately upon the date specified by written consent or agreement of the holders of at least 66% of the then outstanding shares of Series B Preferred Stock and Series C Preferred Stock (voting together as a single class and not as a separate series, and on an as-converted basis).

(c) Mechanics of Conversion.

(i) Before any holder of Preferred Stock shall be entitled to voluntarily convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, (or shall execute and deliver such reasonable and appropriate documentation, including an affidavit of loss, if such certificate or certificates, are lost, stolen or destroyed) at the office of the Corporation or of any transfer agent for the Preferred Stock, and shall give written notice to the Corporation at such office that such holder elects to convert the same and shall state therein the name or names in which such holder wishes the certificate for shares of Common Stock to be issued. The Corporation shall, as soon as practicable thereafter, issue and deliver at such office to such holder of Preferred Stock, or to such holder's nominee or nominees, a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted, and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. If the conversion is in connection with an underwritten offering of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the persons entitled to receive the Common Stock upon conversion of the Preferred Stock shall not be deemed to have converted such Preferred Stock until immediately prior to the closing of such sale of securities.

(ii) Notwithstanding the foregoing, if any shares of Preferred Stock are converting into shares of Common Stock pursuant to the provisions of Article IV, Section 4(b), the conversion shall occur automatically without any further action by the holders of Preferred Stock affected thereby and whether or not the certificates representing such shares of Preferred Stock are surrendered to the Corporation or any transfer agent for the Preferred Stock. The Corporation shall not be obligated to issue a certificate or certificates evidencing the shares of Common Stock resulting from the automatic conversion unless the certificate or certificates evidencing such shares of Preferred Stock are either delivered to the Corporation or any transfer agent for the Preferred Stock, or the holder of Preferred Stock notifies the Corporation or any transfer agent for the Preferred Stock that such certificate or certificates have been lost, stolen or destroyed and executes an agreement reasonably satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificate or certificates. The Corporation shall, as soon as practicable after such delivery, or such agreement and indemnification in the case of a lost, stolen or destroyed certificate, issue and deliver to such holder of Preferred Stock a certificate or certificates for the number of shares of Common Stock to which such holder shall be entitled as aforesaid.

(d) Conversion Price Adjustments of Preferred Stock for Certain Dilutive Issuances, Splits and Combinations. The Conversion Price of the Preferred Stock shall be subject to adjustment from time to time as follows:

(i)

(A) If this Corporation shall issue, on or after the date upon which a share of Preferred Stock was first issued (the "*Effective Date*"), any Additional Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price applicable to a series of Preferred Stock in effect immediately prior to the issuance of such Additional Stock, the Conversion Price for such series in effect immediately prior to each such issuance shall forthwith (except as otherwise provided in this clause (i)) be adjusted to a price determined by multiplying such Conversion Price by a fraction: (x) the numerator of which is equal to the number of shares of Common Stock Outstanding (as defined below) immediately prior to such issuance plus the number of shares of Common Stock which the aggregate consideration received by this Corporation for the total number of Additional Stock so issued would purchase at the Conversion Price in effect immediately prior to such issuance; and (y) the denominator of which is equal to the number of shares of Common Stock Outstanding (as defined below) prior to such issuance plus the number of Additional Stock so issued. For purposes of this Section 4(d)(i)(A), the term "*Common Stock Outstanding*" shall mean and include the following: (1) outstanding Common Stock, (2) Common Stock issuable upon conversion of outstanding Preferred Stock, (3) Common Stock issuable upon exercise of outstanding stock options and (4) Common Stock issuable upon exercise (and, in the case of warrants to purchase Preferred Stock, conversion) of outstanding warrants. Shares described in (1) through (4) above shall be included whether vested or unvested, whether contingent or non-contingent, and whether exercisable or not yet exercisable.

(B) No adjustment of the Conversion Price for the Preferred Stock shall be made in an amount less than one cent per share, provided that any adjustments that are not required to be made by reason of this sentence shall be carried forward and shall be either taken into account in any subsequent adjustment made prior to three (3) years from the date of the event giving rise to the adjustment being carried forward, or shall be made at the end of three (3) years from the date of the event giving rise to the adjustment being carried forward. Except to the limited extent provided for in subsections (E)(3) and (E)(4), no adjustment of such Conversion Price pursuant to this subsection 4(d)(i) shall have the effect of increasing the Conversion Price above the Conversion Price in effect immediately prior to such adjustment.

(C) In the case of the issuance of Common Stock for cash, the consideration shall be deemed to be the amount of cash paid therefor before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by this Corporation for any underwriting or otherwise in connection with the issuance and sale thereof.

(D) In the case of the issuance of the Common Stock for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined by the Board of Directors (including the approval of the Series B Director and the Series C Director) irrespective of any accounting treatment.

(E) In the case of the issuance of options to purchase or rights to subscribe for Common Stock, securities by their terms convertible into or exchangeable for Common Stock or options to purchase or rights to subscribe for such convertible or exchangeable securities, the following provisions shall apply for purposes of determining the number of shares of Additional Stock issued and the consideration paid therefore:

(1) The aggregate maximum number of shares of Common Stock deliverable upon exercise (assuming the satisfaction of any conditions to exercisability, including without limitation, the passage of time, but without taking into account potential antidilution adjustments) of such options to purchase or rights to subscribe for Common Stock shall be deemed to have been issued at the time such options or rights were issued and for a consideration equal to the consideration (determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)), if any, received by this Corporation upon the issuance of such options or rights plus the minimum exercise price provided in such options or rights (without taking into account potential antidilution adjustments) for the Common Stock covered thereby.

(2) The aggregate maximum number of shares of Common Stock deliverable upon conversion of, or in exchange (assuming the satisfaction of any conditions to convertibility or exchangeability, including, without limitation, the passage of time, but without taking into account potential antidilution adjustments) for, any such convertible or exchangeable securities or upon the exercise of options to purchase or rights to subscribe for such convertible or exchangeable securities and subsequent conversion or exchange thereof shall be deemed to have been issued at the time such securities were issued or such options or rights were issued and for a consideration equal to the consideration, if any, received by this Corporation for any such securities and related options or rights (excluding any cash received on account of accrued interest or accrued dividends), plus the minimum additional consideration, if any, to be received by this Corporation (without taking into account potential antidilution adjustments) upon the conversion or exchange of such securities or the exercise of any related options or rights (the consideration in each case to be determined in the manner provided in subsections 4(d)(i)(C) and (d)(i)(D)).

(3) In the event of any change in the number of shares of Common Stock deliverable or in the consideration payable to this Corporation upon exercise of such options or rights or upon conversion of or in exchange for such convertible or exchangeable securities, the Conversion Price of the Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities, shall be recomputed to reflect such change, but no further adjustment shall be made for the actual issuance of Common Stock or any payment of such consideration upon the exercise of any such options or rights or the conversion or exchange of such securities.

(4) Upon the expiration of any such options or rights, the termination of any such rights to convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price of the Preferred Stock, to the extent in any way affected by or computed using such options, rights or securities or options or rights related to such securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock (and convertible or exchangeable securities that remain in effect) actually issued upon the exercise of such options or rights, upon the conversion or exchange of such securities or upon the exercise of the options or rights related to such securities.

(5) The number of shares of Additional Stock deemed issued and the consideration deemed paid therefor pursuant to subsections 4(d)(i)(E)(1) and (2) shall be appropriately adjusted to reflect any change, termination or expiration of the type described in either subsection 4(d)(i)(E)(3) or (4).

(ii) **"Additional Stock"** shall mean any shares of Common Stock issued (or deemed to have been issued pursuant to subsection 4(d)(i)(E)) by this Corporation on or after the Effective Date other than:

(A) shares of Preferred Stock or Common Stock issued pursuant to a stock split, reverse stock split, reincorporation, reclassification, or combination of the Corporation's capital stock, including shares issued prior to the date hereof in connection with the Corporation's reincorporation in the State of Delaware and the previous reclassification of the Corporation's Series B Preferred Stock;

(B) shares of Common Stock issuable or issued to directors, officers, employees, and consultants of the Corporation directly or pursuant to stock or stock option plans, agreements or other arrangements approved by the Board of Directors of the Corporation (including the Series B Director and the Series C Director);

(C) shares of capital stock, or options or warrants to purchase capital stock, issued to financial institutions or lessors in connection with commercial credit arrangements, equipment financings, or similar transactions, which issuances are primarily for other than equity financing purposes, and provided that such issuance of options or warrants is approved by the Board of Directors, including the Series B Director and Series C Director;

(D) shares of Common Stock or Preferred Stock issuable upon exercise of options and warrants outstanding as of the date of filing of this Restated Certificate;

(E) shares of capital stock or warrants or options to purchase capital stock issued in connection with bona fide acquisitions, mergers, or similar transactions, the terms of which are approved by the Board of Directors, including the Series B Director and Series C Director;

(F) shares of Series C Preferred Stock issued or issuable (i) pursuant to the that certain Series C Preferred Stock Purchase Agreement dated on or around October 30, 2008, as the same may be amended from time to time pursuant to its terms and (ii) upon exercise of warrants issued pursuant to that certain Note and Warrant Purchase Agreement dated on or around January 31, 2012, as the same may be amended from time to time pursuant to its terms;

(G) shares of Common Stock issued or issuable upon conversion of the Corporation's Preferred Stock; and

(H) shares of Common Stock issued or issuable in a Qualified Public Offering.

The "*Effective Price*" of Additional Stock shall mean the quotient determined by dividing the total number of shares of Additional Stock issued or sold, or deemed to have been issued or sold by the Corporation, into the aggregate consideration received, or deemed to have been received by the Corporation for such issue for such Additional Stock.

(iii) Adjustment For Stock Splits And Combinations. If the Corporation shall at any time or from time to time after the Effective Date effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, the Conversion Price for the applicable series of Preferred Stock in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Corporation shall at any time or from time to time after the Effective Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, the Conversion Price for the applicable series of Preferred Stock in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(ii) shall become effective at the close of business on the date the subdivision or combination becomes effective.

(iv) Adjustment For Common Stock Dividends And Distributions. If the Corporation at any time or from time to time after the Effective Date makes, or fixes a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, in each such event the Conversion Price for the applicable series of Preferred Stock that is then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction (i) the numerator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (ii) the denominator of which is the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this Section 4(iii) to reflect the actual payment, if any, of such dividend or distribution.

(v) Adjustment For Reclassification, Exchange And Substitution. If at any time or from time to time after the Effective Date, the Common Stock issuable upon the conversion of the Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than pursuant to a transaction deemed to be a Liquidation Event pursuant to Section 2(e)(i) or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section 4), in any such event each holder of Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, classification or other change by holders of the maximum number of shares of Common Stock into which such shares of Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(e) Reorganizations, Mergers Or Consolidations. If at any time or from time to time after the Effective Date, there is a capital reorganization of the Common Stock or the merger or consolidation of the Corporation with or into another corporation or another entity or person (other than pursuant to a transaction deemed to be a Liquidation Event pursuant to Section 2(e)(i) or a recapitalization, subdivision, combination, classification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization, provision shall be made so that the holders of the Preferred Stock shall thereafter be entitled to receive upon Conversion of such Preferred Stock the number of shares of stock or other securities or property of the Corporation to which a holder of the number of shares of Common Stock deliverable upon Conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of such Preferred Stock after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Conversion Price then in effect and the number of shares issuable upon Conversion of such Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(f) No Impairment. The Corporation shall not, by amendment of its Certificate of Incorporation or through any reorganization, recapitalization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but shall at all times in good faith assist in the carrying out of all the provisions of this Section 4 and in the taking of all

such action as may be necessary or appropriate in order to protect the Conversion Rights of the holders of Preferred Stock against impairment.

(g) No Fractional Shares. No fractional shares shall be issued upon the Conversion of any share or shares of Preferred Stock, and the number of shares of Common Stock to be issued shall be rounded to the nearest whole share. Whether or not fractional shares are issuable upon such Conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate Conversion.

(h) Certificate As To Adjustment. Upon the occurrence of each adjustment or readjustment of the Conversion Price of Preferred Stock pursuant to this Section 4, the Corporation, at its expense, shall promptly compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each holder of such Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth: (i) such adjustment and readjustment, (ii) the Conversion Price for such Preferred Stock at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property that at the time would be received upon the Conversion of a share of such Preferred Stock.

(i) Notices Of Record Date. In the event of any taking by the Corporation of a reward of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, any right to subscribe for, purchase, or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation shall mail to each holder of Preferred Stock at least 10 days' prior written notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution, or right, and the amount and character of such dividend, distribution, or right. No event described herein shall take place sooner than ten (10) days after this Corporation has given the first notice provided for herein; provided, however, that subject to compliance with the General Corporation Law such periods may be shortened or waived upon the written consent of the holders of Preferred Stock that represent at least 66% of the voting power of all then outstanding shares of such Preferred Stock (voting together as a single class and not as separate series, and on an as-converted to Common Stock basis).

(j) Reservation Of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the Conversion of shares of Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the Conversion of all outstanding shares of such Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the Conversion of all the outstanding shares of Preferred Stock, in addition to such other remedies as shall be available to the holder of such Preferred Stock, the Corporation shall take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Certificate of Incorporation.

(k) Notices. Any notice required by the provisions of this Section 4 to be given to the holders of shares of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at the holder's address appearing on the books of the Corporation.

5. Voting Rights.

(a) General Voting Rights. The holder of each share of Preferred Stock shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the Bylaws of this Corporation, and except as provided in subsection 5(b) below with respect to the election of directors by the separate class vote of the holders of Common Stock or with respect to other matters required by law to be submitted to a class vote, shall be entitled to vote, together with holders of Common Stock, with respect to any question upon which holders of Common Stock have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Voting for the Election of Directors.

(i) As long as any shares of Series B Preferred Stock remain outstanding, the holders of such shares of Series B Preferred Stock, voting as a separate series, shall be entitled to elect one (1) director of this Corporation at any election of directors (the "*Series B Director*"). The Series B Director may be removed from the Board only by the affirmative vote or written consent of the holders of a majority of the Series B Preferred Stock voting as a separate series.

(ii) As long as any shares of Series C Preferred Stock remain outstanding, the holders of such shares of Series C Preferred Stock, voting as a separate series, shall be entitled to elect one (1) director of this Corporation at any election of directors (the "*Series C Director*"). The Series C Director may be removed from the Board only by the affirmative vote or written consent of the holders of a majority of the Series C Preferred Stock voting as a separate series.

(iii) The holders of outstanding Common Stock, voting as a separate class, shall be entitled to elect two (2) directors of this Corporation at any election of directors (the "*Common Directors*"). Each Common Director may be removed from the Board only by the affirmative vote or written consent of the holders of a majority of the Common Stock voting as a separate class.

(iv) The holders of Preferred Stock and Common Stock (voting together as a single class and not as separate series, and on an as-converted basis) shall be entitled to elect three (3) directors of this Corporation (the "*Mutual Directors*"). Each Mutual Director may be removed from the Board only by the affirmative vote or written consent of the holders of a majority of the Common Stock and Preferred Stock, voting as a single class and not as separate series, and on an as-converted basis.

Notwithstanding the provisions of Section 223(a)(1) and 223(a)(2) of the General Corporation Law, subject to any agreement among the stockholders of this Corporation, any vacancy, including newly created directorships resulting from any increase in the authorized number of directors or amendment of this Restated Certificate, and vacancies created by removal or resignation of a director, may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced; provided, however, that where such vacancy occurs among the directors elected by the holders of a class or series of stock, the consent of a majority-in-interest of the holders of shares of such class or series shall be required prior to any such action by the Board.

6. Protective Provisions.

(a) The Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of at least 66% of the then outstanding shares of Series B Preferred Stock and Series C Preferred Stock (voting together as a single class, not as a separate series and on an as converted basis) take any of the following actions:

- (i) amend this Corporation's Restated Certificate or its Bylaws;
- (ii) authorize or issue or obligate itself to issue, any equity security (including any other security convertible into or exercisable for any such equity security) except for compensatory issuances and in lease, borrowing and comparable transactions, in each such case, without first obtaining the approval of (i) the Series C Director and (ii) the Series B Director;
- (iii) redeem, purchase or otherwise acquire (or pay into or set aside for a sinking fund for such purpose) any share or shares of Preferred Stock or Common Stock; provided, however, that this restriction shall not apply to the repurchase of shares at cost of Common Stock from employees, officers, directors, consultants or other persons performing services for this Corporation or any subsidiary pursuant to agreements under which this Corporation has the option to repurchase such shares upon the occurrence of certain events, such as the termination of employment or service, or pursuant to a right of first refusal, with the approval of the Series C Director and the Series B Director;
- (iv) declare or pay a dividend to or distribute any property to holders of Common Stock or holders of Series A Preferred Stock, except as required in connection with a Liquidation Event;
- (v) authorize the liquidation, dissolution, recapitalization, reorganization or filing for bankruptcy of this Corporation;
- (vi) materially change the nature of the Corporation's business;
- (vii) change the authorized number of directors of this Corporation or delegate substantial board authority to committees;
- (viii) authorize the issuance of any securities by a subsidiary of the Corporation to any other person other than the Corporation;
- (ix) authorize the increase of the number of shares issuable under any stock option or purchase plan without first obtaining the approval of (i) the Series C Director and (ii) the Series B Director;
- (x) transact with an affiliate or stockholder other than in the ordinary course of business; or
- (xi) authorize or issue debt instruments that obligate the Corporation to repay more than \$5,000,000 of principal.

(b) The Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of 65% of the then outstanding shares of Series B Preferred Stock (i) alter or change the rights, preferences or

privileges of the shares of the Series B Preferred Stock in a manner that would materially and adversely affect such shares in a manner different than the Series C Preferred Stock or (ii) authorize additional shares of Series B Preferred Stock.

(c) The Corporation shall not (by amendment, merger, consolidation or otherwise) without first obtaining the approval (by vote or written consent, as provided by law) of the holders of a majority of the then outstanding shares of Series C Preferred Stock (i) alter or change the rights, preferences or privileges of the shares of the Series C Preferred Stock in a manner that would materially and adversely affect such shares in a manner different than the Series B Preferred Stock or (ii) authorize additional shares of Series C Preferred Stock.

7. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to Section 4 hereof, the shares so converted shall be cancelled and shall not be issuable by this Corporation. The Restated Certificate of this Corporation shall be appropriately amended to effect the corresponding reduction in this Corporation's authorized capital stock.

C. Common Stock. The rights, preferences, privileges and restrictions granted to and imposed on the Common Stock are as set forth below in this Article IV(C).

1. Dividend Rights. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of this Corporation legally available therefor, any dividends as may be declared from time to time by the Board of Directors.

2. Liquidation Rights. Upon the liquidation, dissolution or winding up of this Corporation, the assets of this Corporation shall be distributed as provided in Section 2 of Article IV(B) hereof.

3. Redemption. The Common Stock is not redeemable at the option of the holder.

4. Voting Rights. The holder of each share of Common Stock shall have the right to one vote for each such share, and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of this Corporation, and shall be entitled to vote upon such matters and in such manner as may be provided by law.

ARTICLE V

In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

A. The Board of Directors of this Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

B. Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

C. The books of the Corporation may be kept at such place within or without the State of Delaware as the Bylaws of the Corporation may provide or as may be designated from time to time by the Board of Directors of the Corporation.

IN WITNESS WHEREOF, the undersigned has caused this Amended and Restated Certificate of Incorporation to be executed by Andre Simone, its Chief Financial Officer, this 31st day of January, 2012.

IntelPeer, Inc.

/s/ Andre Simone
Andre Simone, Chief Financial Officer

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"PEERLESS INTERIM, INC.", A DELAWARE CORPORATION,
WITH AND INTO "PEERLESS NETWORK, INC." UNDER THE NAME OF
"PEERLESS NETWORK, INC.", A CORPORATION ORGANIZED AND EXISTING
UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED
IN THIS OFFICE ON THE TWELFTH DAY OF DECEMBER, A.D. 2016, AT
1:23 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE
NEW CASTLE COUNTY RECORDER OF DEEDS.



3961197 8100M
SR# 20167027389

You may verify this certificate online at corp.delaware.gov/authver.shtml

A handwritten signature of Jeffrey W. Bullock, Secretary of State, is written over a horizontal line. Below the signature, the text "Jeffrey W. Bullock, Secretary of State" is printed.

Authentication: 203496064
Date: 12-12-16

State of Delaware
Secretary of State
Division of Corporations
Delivered 01/23/2017 12/12/2016
FILED 01/23/2017 12/12/2016
SR 20167027389 - File Number: 3961197

STATE OF DELAWARE CERTIFICATE OF MERGER OF DOMESTIC CORPORATIONS

Pursuant to Title 8, Section 251(c) of the Delaware General Corporation Law (the "DGCL"), the undersigned corporation executed the following Certificate of Merger:

FIRST: The name of the surviving corporation is Peerless Network, Inc., a Delaware corporation and the name of the corporation being merged into this surviving corporation is Peerless Interim, Inc.

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations.

THIRD: The name of the surviving corporation is Peerless Network, Inc., a Delaware corporation.

FOURTH: The Certificate of Incorporation attached as Exhibit A hereto shall be the Certificate of Incorporation of the surviving corporation.

FIFTH: The merger is to become effective upon the filing of this certificate of merger.

SIXTH: The Agreement of Merger is on file at 222 S. Riverside Plaza, Suite 2730, Chicago, IL 60606, the place of business of the surviving corporation.

SEVENTH: A copy of the Agreement of Merger will be furnished by the surviving corporation on request, without cost, to any stockholder of the constituent corporations.

IN WITNESS WHEREOF, said surviving corporation has caused this certificate to be signed by an authorized officer this 12 day of December, 2016.



Douglass Lee, Chief Financial Officer

Exhibit A
to
Certificate of Merger
Amended and Restated Certificate of Incorporation
Peerless Network, Inc.

victoria.mcguire@dlapiper.com
Project Pine/10:11:2021 14:08

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
PEERLESS NETWORK, INC.**

1. The name of the corporation is Peerless Network, Inc. (the "**Corporation**").
2. The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, in the County of New Castle, in the State of Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.
3. The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.
4. The total number of shares of stock which the Corporation is authorized to issue is 100. All shares shall be Common Stock par value \$0.001 per share and are to be of one class.
5. Unless and except to the extent that the by-laws of the Corporation (the "**By-laws**") shall so require, the election of directors of the Corporation need not be by written ballot.
6. To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or to its stockholders for monetary damages for any breach of fiduciary duty as a director. No amendment to, modification of or repeal of this paragraph seven shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment.
7. The Corporation shall indemnify, advance expenses, and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "**Covered Person**") who was or is made or is threatened to be made a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, enterprise or nonprofit entity, including service with respect to

employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except for claims for indemnification (following the final disposition of such Proceeding) or advancement of expenses not paid in full, the Corporation shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized in the specific case by the board of directors of the Corporation. Any amendment, repeal or modification of this paragraph 7 shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

8. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to adopt, amend or repeal the By-laws or adopt new By-laws without any action on the part of the stockholders; provided that any By-law adopted or amended by the board of directors, and any powers thereby conferred, may be amended, altered or repealed by the stockholders.

9. The Corporation shall have the right, subject to any express provisions or restrictions contained in the Amended and Restated Certificate of Incorporation of the Corporation (the "**Certificate of Incorporation**") or the By-laws, from time to time, to amend, alter or repeal any provision of the Certificate of Incorporation in any manner now or hereafter provided by law, and all rights and powers of any kind conferred upon a director or stockholder of the Corporation by the Certificate of Incorporation or any amendment thereof are conferred subject to such right.

10. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim for breach of a fiduciary duty owed by any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the DGCL, the Certificate of Incorporation or the By-laws or (iv) any action asserting a claim governed by the internal affairs doctrine, in each case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein.

CERTIFICATE OF INCORPORATION
OF
PEERLESS NETWORK HOLDINGS, INC.

FIRST: The name of this corporation is Peerless Network Holdings, Inc. (the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, in the County of New Castle, in the State of Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

THIRD: The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware ("General Corporation Law").

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 40,000,000 shares of Common Stock, \$.001 par value per share ("Common Stock"), and (ii) 24,019,693 shares of Preferred Stock, \$.001 par value per share ("Preferred Stock").

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

B. PREFERRED STOCK

10,281,089 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "**Series A Preferred Stock**"; 10,909,090 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "**Series B Preferred Stock**"; and 2,829,514 shares of the authorized and unissued Preferred Stock of the Corporation are hereby designated "**Series C Preferred Stock**", in each case, with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. Unless otherwise

indicated, references to "Sections" or "Subsections" in this Part B of this Article Fourth refer to sections and subsections of Part B of this Article Fourth. Unless otherwise specifically indicated, reference to Series B-C shall indicate and refer to Series B Preferred Stock and Series C Preferred Stock collectively.

1. Dividends.

1.1 Series B Preferred Stock Dividend and Series C Preferred Stock Dividend.

From and after the date of the issuance of any shares of Series B Preferred Stock, dividends at the rate of eight percent (8%) per annum, compounded annually, on the Series B Original Issue Price (defined below) shall accrue on each share of Series B Preferred Stock (the "**Series B Accruing Dividends**"), prior and in preference to the payment of any dividend or other distribution upon the Series A Preferred Stock and the Common Stock. From and after the date of issuance of any shares of Series C Preferred Stock, dividends at the rate of eight percent (8%) per annum, compounded annually, on the Series C Original Issue Price (defined below) shall accrue on each share of Series C Preferred Stock (the "**Series C Accruing Dividends**") prior and in preference to the payment of any dividend or other distribution upon the Series A Preferred Stock and the Common Stock. The Series B Accruing Dividends and the Series C Accruing Dividends (collectively the "**Series B-C Accruing Dividends**") shall be declared and paid on a pari passu basis, based upon the full amount to which any holder may be entitled under this Section 1.1. Series B-C Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided however, that except as set forth in the following sentence of this Section 1.1, or in Section 2.1, Section 2.2, Section 4.3.1, Section 5.1.2 or Section 6, such Series B-C Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such Series B-C Accruing Dividends. The Corporation shall not declare, pay or set aside any dividends on shares of Common Stock (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in the Certificate of Incorporation) the holders of the Series B-C Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series B-C Preferred Stock in an amount at least equal to the product of (1) the dividend payable on each share of Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series B-C Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend. The "**Series B Original Issue Price**" shall mean \$1.10 per share and "**Series C Original Issue Price**" shall mean \$1.9252 per share, each subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock and/or Series C Preferred Stock, as the case may be.

1.2 Series A Preferred Stock Dividend. From and after the date of the issuance of any shares of Series A Preferred Stock (which in no event shall be prior to the date of initial issuance of any shares of Series B Preferred Stock), dividends at the rate of eight percent (8%) per annum, compounded annually, on the Series A Original Issue Price (defined below) shall accrue on each share of Series A Preferred Stock (the "**Series A Accruing Dividends**"), and together with the Series B-C Accruing Dividends, shall be each referred to herein as the "**Accruing Dividends**"), prior and in preference to the payment of any dividend or other distribution upon the Common Stock. Series A Accruing Dividends shall accrue from day to day, whether or not declared, and shall be cumulative; provided however, that except as set forth

in the following sentence of this Section 1.2 or in Section 2.1, Section 2.2, Section 4.3.1, Section 5.1.2 or Section 6, such Series A Accruing Dividends shall be payable only when, as, and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such Series A Accruing Dividends; and provided that in no event shall any Series A Accruing Dividends be paid unless and until all Series B-C Accruing Dividends have been paid in full. The Corporation shall not declare, pay or set aside any dividends on shares of Common Stock (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in the Certificate of Incorporation) the holders of the Series A Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Series A Preferred Stock in an amount at least equal to the product of (1) the dividend payable on each share of Common Stock and (2) the number of shares of Common Stock issuable upon conversion of a share of Series A Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend. The "**Series A Original Issue Price**" shall mean \$1.00 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

2.1 Payments to Holders of Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series B-C Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders before any payment shall be made to the holders of Series A Preferred Stock and Common Stock by reason of their ownership thereof, an amount per share equal to the Series B Original Issue Price with respect to the shares of Series B Preferred Stock and the Series C Original Price with respect to the shares of the Series C Preferred Stock, plus, in each case, any Series B-C Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon (the amount payable pursuant to this sentence is hereinafter referred to as the "**Series B Liquidation Amount**" with respect to the Series B Preferred Stock and the "**Series C Liquidation Amount**" with respect to the Series C Preferred Stock, and collectively as the "**Series B-C Liquidation Amount**"). If upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series B-C Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1, the holders of shares of Series B-C Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series A Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, after payment of the Series B-C Liquidation Amount on all shares of Series B-C Preferred Stock then outstanding and before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the Series A Original Issue Price, plus any Series A Accruing Dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon (the amount payable pursuant to this sentence is hereinafter referred to as the "**Series A Liquidation**

Amount”). If upon any such liquidation, dissolution or winding up of the Corporation, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Series A Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1, then following payment of the Series B-C Liquidation Amount in full, the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 Payments to Holders of Common Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment of all preferential amounts required to be paid first to the holders of shares of Series B-C Preferred Stock, and then to the holders of Series A Preferred Stock pursuant to Subsection 2.1, the remaining assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock, pro rata based on the number of shares held by each such holder. For the avoidance of doubt, Series A Preferred Stock and Series B-C Preferred Stock shall not participate in any distribution to the holders of shares of Common Stock under this Subsection 2.2. Notwithstanding the above, if the net proceeds available for distribution pursuant to this Subsection 2.2 (after taking into account distributions to be made to the holders of Preferred Stock of the Series A Accruing Dividend and the Series B-C Accruing Dividend) (the “**Post Dividend Net Proceeds**”) would result in a payment per share to the holders of shares of Common Stock (assuming conversion into Common Stock of all issued and outstanding shares of Series A Preferred Stock and Series B-C Preferred Stock) of an amount which is greater than (i) the Series A Original Issue Price, then the holders of Series A Preferred Stock, in lieu of the distributions in accordance with Subsection 2.1 above, shall receive distributions with respect to each share of Series A Preferred Stock equal to (x) the Series A Accruing Dividend then accrued but unpaid thereon, and (y) such amount as would be distributed on such share of Series A Preferred Stock were it converted into share(s) of Common Stock, (ii) the Series B Original Issue Price, then the holders of Series B Preferred Stock, in lieu of the distributions in accordance with Subsection 2.1 above, shall receive distributions with respect to each share of Series B Preferred Stock equal to (x) the Series B Accruing Dividend then accrued but unpaid thereon, and (y) such amount as would be distributed on such share of Series B Preferred Stock were it converted into share(s) of Common Stock, or (iii) the Series C Original Issue Price, then the holders of Series C Preferred Stock, in lieu of the distribution in accordance with Subsection 2.1 above, shall receive distributions with respect to each share of Series C Preferred Stock equal to (x) the Series C Accruing Dividend then accrued but unpaid thereon, and (y) such amount as would be distributed on such share of Series C Preferred Stock were it converted into share(s) of Common Stock. Notwithstanding the foregoing, no distributions shall be made to the Preferred Stockholders pursuant to this Subsection 2.2 if the provisions of Subsections 5.1.1 or 5.1.2 apply.

2.3 Deemed Liquidation Events.

2.3.1 Definition. Each of the following events shall be considered a “**Deemed Liquidation Event**” unless the holders of at least a majority of the outstanding shares of Preferred Stock elect otherwise by written notice sent to the Corporation at least fifteen (15) days prior to the effective date of any such event:

- (a) a merger or consolidation in which

- (i) the Corporation is a constituent party or
- (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or the sale or disposition (whether by merger or otherwise) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

2.3.2 Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the “**Merger Agreement**”) provides that the consideration payable to the stockholders of the Corporation shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2.

(b) In the event of a Deemed Liquidation Event referred to in Subsection 2.3.1(a)(ii) or 2.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within 90 days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Preferred Stock no later than the 90th day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause (ii) to require the redemption of such shares of Preferred Stock, and (ii) if the holders of at least a majority in voting power of the then outstanding shares of Preferred Stock so request in a written instrument delivered to the Corporation not later than 120 days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board of Directors of the Corporation), together with any other assets of the Corporation available for distribution to its stockholders (the “**Available Proceeds**”), to the extent legally available therefor, on the 150th day after such Deemed Liquidation Event, to redeem all outstanding shares of Series B-C Preferred Stock at a price per share equal to the Series B Liquidation Amount with respect to the Series B Preferred Stock and the Series C Liquidation Amount with respect to the Series C Preferred Stock, and all

outstanding shares of Series A Preferred Stock at a price per share equal to the Series A Liquidation Amount. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, the Corporation first shall redeem each holder's shares of Series B-C Preferred Stock to the fullest extent of such Available Proceeds (or if not sufficient to pay the Series B-C Liquidation Amount in full, the Corporation shall redeem each holder's shares of a pro rata portion of Series B-C Preferred Stock, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor). If any amounts remain following such redemption, the Corporation shall redeem the Series A Preferred Stock in a similar manner. The provisions of Subsections 6.2 through 6.4 shall apply, with such necessary changes in the details thereof as are necessitated by the context, to the redemption of the Preferred Stock pursuant to this Subsection 2.3.2(b). Prior to the distribution or redemption provided for in this Subsection 2.3.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

2.3.3 Amount Deemed Paid or Distributed. If the amount deemed paid or distributed under this Subsection 2.3.3 is made in property other than in cash, the value of such distribution shall be the fair market value of such property, determined as follows:

(a) For securities not subject to investment letters or other similar restrictions on free marketability,

(i) if traded on a securities exchange or the NASDAQ Stock Market, the value shall be deemed to be the average of the closing prices of the securities on such exchange or market over the 30-period ending three days prior to the closing of such transaction;

(ii) if actively traded over-the-counter, the value shall be deemed to be the average of the closing bid prices over the 30-day period ending three days prior to the closing of such transaction; or

(iii) if there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors of the Corporation.

(b) The method of valuation of securities subject to investment letters or other similar restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall take into account an appropriate discount (as determined in good faith by the Board of Directors of the Corporation) from the market value as determined pursuant to clause (a) above so as to reflect the approximate fair market value thereof.

3. Voting.

3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of the Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class.

3.2 Election of Directors. The holders of record of the shares of Series B Preferred Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation (the “**Series B Directors**”), the holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect two directors of the Corporation (the “**Series A Directors**”) and the holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect one director of the Corporation. The Series B Directors and Series A Directors are sometimes collectively referred to as the “**Preferred Directors**.” Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of Preferred Stock or Common Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the first sentence of this Subsection 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the Preferred Stock or Common Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. If the number of directors fixed by the Bylaws is increased to seven (7), then two of such additional directors shall be elected by the holders of record of the shares of Preferred Stock, voting together as a separate class. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Subsection 3.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Subsection 3.2. The rights of the holders of the Series A Preferred Stock under the first sentence of this Subsection 3.2 shall terminate on the first date following the Series B Original Issue Date (as defined below) on which there are issued and outstanding less than 5,073,045 shares of Series A Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock). The rights of the holders of the Series B Preferred Stock under the first sentence of this Subsection 3.2 shall terminate on the first date following the Series B Original Issue Date (as defined below) on which there are issued and outstanding less than 4,565,455 shares of Series B Preferred Stock (subject to appropriate

adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock).

3.3 Series C Preferred Stock Protective Provisions. At any time when at least 1,316,000 shares of Series C Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Series C Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class:

(a) Amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation in a manner that adversely affects the powers, preferences or rights of the Series C Preferred Stock;

(b) Create (by reclassification or otherwise), or authorize the creation of any additional class or series of capital stock unless the same ranks junior to the Series C Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of the dividends and rights of redemption, or increase the authorized number of shares of any class or series of capital stock (including shares issuable pursuant to the employee stock option plan) unless the same ranks junior to the Series C Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption; or

(c) Purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of Common Stock of the Corporation other than (i) dividends or other distributions payable on the Common Stock solely in the form of additional shares of common Stock and (ii) repurchases of stock (at the original purchase price thereof) from former employees, officers, directors, consultants or other persons who performed services for the corporation or any subsidiary in connection with the cessation of such employment or service.

3.4 Series B Preferred Stock Protective Provisions. At any time when at least 4,545,455 shares of Series B Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Series B Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class:

(a) amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation in a manner that adversely affects the powers, preferences or rights of the Series B Preferred Stock;

(b) create (by reclassification or otherwise), or authorize the creation of any additional class or series of capital stock unless the same ranks junior to the Series B Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption, or increase the authorized number of shares of any class or series of capital stock (including shares issuable pursuant to the employee stock option plan) unless the same ranks junior to the Series B Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption;

(c) purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of Common Stock of the Corporation other than (i) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (ii) repurchases of stock (at the original purchase price thereof) from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service; or.

(d) increase or decrease in the authorized size of the Board of Directors.

3.5 Series A Preferred Stock Protective Provisions. At any time when at least 5,073,045 shares of Series A Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class:

(a) amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation in a manner that adversely affects the powers, preferences or rights of the Series A Preferred Stock; or

(b) except for the Series B Preferred Stock and Series C Preferred Stock, create (by reclassification or otherwise), or authorize the creation of any additional class or series of capital stock unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption, or increase the authorized number of shares of any class or series of capital stock (including shares issuable pursuant to the employee stock option plan) unless the same ranks junior to the Series A Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption.

3.6 Preferred Stock Protective Provisions. At any time when at least 3,818,182 shares of Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, effect any Deemed Liquidation Event without (in addition to

any other vote required by law or the Certificate of Incorporation) the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of the Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class.

3.7 Non-Circumvention. Notwithstanding anything in this Certificate of Incorporation or any other organizational documents of the Corporation or any subsidiary of the Corporation (whether or not wholly-owned), the Corporation shall not, and shall not permit or cause any such subsidiary to, take any action, or omit to take any action, either directly or indirectly or by amendment, merger, consolidation or otherwise, that would (a) constitute a violation of the rights, preferences or privileges of the holders of Preferred Stock had such action or omission been taken by the Corporation or (b) conflict with, circumvent or contravene or adversely affect any of the rights, preferences or privileges of the holders of Preferred Stock under this Certificate of Incorporation.

4. Optional Conversion.

The holders of the Preferred Stock shall have conversion rights as follows (the “**Conversion Rights**”):

4.1 Right to Convert.

4.1.1 Conversion Ratio. Each share of Series A Preferred Stock and Series B Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time after the issuance of such share, and without the payment of additional consideration by the holder thereof, into such number of fully paid and nonassessable shares of Common Stock as is determined by dividing the (i) Series A Original Issue Price by the Series A Conversion Price (as defined below) in effect at the time of conversion, in the case of the Series A Preferred Stock, (ii) Series B Original Issue Price by the Series B Conversion Price (as defined below) in effect at the time of conversion, in the case of Series B Preferred Stock, and (iii) Series C Original Issue Price by the Series C Conversion Price (as defined below) in effect at the time of conversion, in the case of the Series C Preferred Stock. The “**Series A Conversion Price**” shall initially be equal to \$1.00. The “**Series B Conversion Price**” shall initially be equal to \$1.10. The “**Series C Conversion Price**” shall initially be equal to \$1.9252. Such initial Series A Conversion Price, Series B Conversion Price and Series C Conversion Price, and the rate at which shares of Series A Preferred Stock and the shares of Series B-C Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. The Series A Conversion Price, the Series B Conversion Price and/or the Series C Conversion Price are sometimes individually referred to as the “**Applicable Conversion Price**”).

4.1.2 Termination of Conversion Rights. In the event of a notice of redemption of any shares of Preferred Stock pursuant to Section 6, the Conversion Rights of the shares designated for redemption shall terminate at the close of business on the last full day preceding the date fixed for redemption, unless the redemption price is not fully paid on such redemption date, in which case the Conversion Rights for such shares shall continue until such price is paid in full. In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent), together with written notice that such holder elects to convert all or any number of the shares of the Preferred Stock represented by such certificate or certificates and, if applicable, any event on which such conversion is contingent. Such notice shall state such holder's name or the names of the nominees in which such holder wishes the certificate or certificates for shares of Common Stock to be issued. If required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such certificates (or lost certificate affidavit and agreement) and notice shall be the time of conversion (the "**Conversion Time**"), and the shares of Common Stock issuable upon conversion of the shares represented by such certificate shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time, (i) issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Preferred Stock converted; provided, however, in the case of a conversion that occurs immediately prior to (and in connection with) the closing of the sale of shares of Common Stock to the public at a price per share (the "**Offering Price**") of less than \$4.40 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock) (as so adjusted from time to time, the "**Target Price**"), in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, then the holders of such shares of Series A Preferred Stock and such Series B-C Preferred Stock being so converted shall receive any accrued but unpaid Series A Accruing Dividend or the Series B-C Accruing Dividend, as the case may be, but only to the extent that the sum of the applicable Accruing

Dividend payable and the Offering Price does not exceed the Target Price. To the extent the amount of the applicable Accruing Dividend payable and Offering Price exceeds the Target Price, then the Preferred Stockholder shall only receive an amount of the applicable Accruing Dividend that is equal to the Target Price less the Offering Price, and shall be entitled to no other amounts of the Accruing Dividend.

4.3.2 Reservation of Shares. The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Series A Conversion Price, the Series B Conversion Price or the Series C Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock, the Series B Preferred Stock or the Series C Preferred Stock, respectively, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and nonassessable shares of Common Stock at such adjusted Series A Conversion Price, Series B Conversion Price or the Series C Conversion Price, as the case may be.

4.3.3 Effect of Conversion. All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Subsection 4.2 and to receive payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock (as the case may be) accordingly.

4.3.4 No Further Adjustment. Upon any such conversion, no adjustment to the Series A Conversion Price or the Series B Conversion Price or the Series C Conversion Price, as the case may be, shall be made for any declared but unpaid dividends on the Series A Preferred Stock, on the Series B Preferred Stock or the Series C Preferred Stock, as applicable, surrendered for conversion or on the Common Stock delivered upon conversion, subject to the payment of any declared but unpaid dividends or Accruing Dividends as provided above.

4.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in

which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

4.4 Adjustments to Series A Conversion Price for Diluting Issues.

4.4.1 Special Definitions. For purposes of this Article Fourth, the following definitions shall apply:

(a) **“Option”** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(b) **“Series B Original Issue Date”** or the **“Series C Original Issue Date”** shall mean the date on which the first share of the Series B Preferred Stock or the Series C Preferred Stock was issued, as the case may be.

(c) **“Convertible Securities”** shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock, but excluding Options.

(d) **“Additional Shares of Common Stock”** shall mean all shares of Common Stock issued (or, pursuant to Subsection 4.4.3 below, deemed to be issued) by the Corporation after the Series C Original Issue Date, other than (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, **“Exempted Securities”**):

- (i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Preferred Stock;
- (ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4.5, 4.6, 4.7 or 4.8;
- (iii) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation;
- (iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities,

in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

- (v) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation (including at least three of the Preferred Directors);
- (vi) shares of Common Stock, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors of the Corporation (including at least three of the Preferred Directors);
- (vii) shares of Common Stock, Options or Convertible Securities issued pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided, that such issuances are approved by the Board of Directors of the Corporation (including at least three of the Preferred Directors); or
- (viii) shares of Common Stock, Options or Convertible Securities issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors of the Corporation (including at least three of the Preferred Directors).

4.4.2 No Adjustment of Conversion Price. No adjustment in any Applicable Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock (in respect of the Series A Conversion Price adjustment), the holders of at least a majority of the then outstanding shares of Series B Preferred Stock (in respect of the Series B Conversion Price adjustment) or the holders of at least a majority of the then outstanding shares of Series C Preferred Stock (in respect of the Series C Conversion Price adjustment) agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

4.4.3 Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Series B Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to any Applicable Conversion Price pursuant to the terms of Subsection 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Applicable Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Series A Conversion Price, Series B Conversion Price or Series C Conversion Price, as the case may be, as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the Applicable Conversion Price to an amount which exceeds the lower of (i) the Applicable Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Applicable Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to the Applicable Conversion Price pursuant to the terms of Subsection 4.4.4 (either because the consideration per share (determined pursuant to Subsection 4.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Applicable Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series C Original Issue Date), are revised after the Series C Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or

Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4.4.3(a)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Applicable Conversion Price pursuant to the terms of Subsection 4.4.4, the Applicable Conversion Price or the shall be readjusted to such Applicable Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to any Applicable Conversion Price, provided for in this Subsection 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection 4.4.3). If the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to any Applicable Conversion Price that would result under the terms of this Subsection 4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to any Applicable Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

4.4.4 Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.

(a) In the event the Corporation shall at any time after the Series C Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4.4.3), without consideration or for a consideration per share less than the Series A Conversion Price in effect immediately prior to such issue, then the Series A Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

- (i) "CP₂" shall mean the Series A Conversion Price in effect immediately after such issue of Additional Shares of Common Stock
- (ii) "CP₁" shall mean the Series A Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;
- (iii) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);
- (iv) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP₁ (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP₁); and
- (v) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(b) In the event the Corporation shall at any time after the Series C Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4.4.3), without consideration or for a consideration per share less than the Series B Conversion Price in effect immediately prior to such issue, then the Series B Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

- (i) "CP₂" shall mean the Series B Conversion Price in effect immediately after such issue of Additional Shares of Common Stock
- (ii) "CP₁" shall mean the Series B Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;

- (iii) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);
- (iv) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP_1); and
- (v) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

(c) In the event the Corporation shall at any time after the Series C Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4.4.3), without consideration or for a consideration per share less than the Series C Conversion Price in effect immediately prior to such issue, then the Series C Conversion Price shall be reduced, concurrently with such issues, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

- (i) "CP₂" shall mean the Series C Conversion Price in effect immediately after such issue of Additional Shares of Common Stock;
- (ii) "CP₁" shall mean the Series C Conversion Price in effect immediately prior to such issue of Additional Shares of Common Stock;
- (iii) "A" shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible

Securities (including Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

- (iv) "B" shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common Stock had been issued at a price per share equal to CP_1 (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by CP_1); and
- (v) "C" shall mean the number of such Additional Shares of Common Stock issued in such transaction.

4.4.5 Determination of Consideration. For purposes of this Subsection 4.4, the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property: Such consideration shall:

- (i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;
- (ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; and
- (iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation.

(b) Options and Convertible Securities. The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Subsection 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing

- (i) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the

minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

- (ii) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities.

4.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to any Applicable Conversion Price pursuant to the terms of Subsection 4.4.4, and such issuance dates occur within a period of no more than 90 days from the first such issuance to the final such issuance, then, upon the final such issuance, the Applicable Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series C Original Issue Date effect a subdivision of the outstanding Common Stock, the Applicable Conversion Price in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock outstanding. If the Corporation shall at any time or from time to time after the Series C Original Issue Date combine the outstanding shares of Common Stock, the Applicable Conversion Price in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock outstanding. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

4.6 Adjustment for Certain Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series C Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Applicable Conversion Price in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying each Applicable Conversion Price then in effect by a fraction:

- (1) the numerator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and
- (2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing, (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Applicable Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Applicable Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made in the Applicable Conversion Price if the holders of Series A Preferred Stock, the Series B Preferred Stock or Series C Preferred Stock (as applicable) simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as the case may be, had been converted into Common Stock on the date of such event.

4.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series C Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of Preferred Stock had been converted into Common Stock on the date of such event.

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than

a transaction covered by Subsections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of the Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Applicable Conversion Price shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Preferred Stock.

4.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of any Applicable Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than twenty (20) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Series A Preferred Stock, Series B Preferred Stock or Series C Preferred Stock, as applicable, a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Series A Preferred Stock, the Series B Preferred Stock or the Series C Preferred Stock, as applicable, is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Preferred Stock (but in any event not later than twenty (20) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Applicable Conversion Price then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of such Preferred Stock.

4.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (or other capital stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer,

dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Stock and the Common Stock. Such notice shall be sent at least 10 days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

5.1 Trigger Events.

5.1.1 Notwithstanding anything to the contrary contained herein, (a) upon the closing of the sale of shares of Common Stock to the public at a price of at least the Target Price, in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$30,000,000 of gross proceeds, to the Corporation, or (b) immediately prior to a Deemed Liquidation Event or a transaction or series of related transactions in which a person, or a group of related persons, acquires from stockholders of the Corporation shares representing more than fifty percent (50%) of the outstanding voting power of the Corporation, pursuant to which the net proceeds payable for each share of Common Stock (after giving effect to the conversion of all Convertible Securities and the exercise of all outstanding Options) is at least the Target Price, (the time of such closing is referred to herein as the “**Mandatory Conversion Time**”), (i) all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate (and no dividends shall be payable thereon, whether or not such dividends have been declared or accrued) and (ii) such shares may not be reissued by the Corporation.

5.1.2 In addition to the foregoing, (a) upon the date and time, or upon the occurrence of an event specified by vote or written consent of the holders of at least a majority of the outstanding shares of Series A Preferred Stock (such date and time specified or the time of the event specified in such vote or written consent, a “**Series A Mandatory Conversion Time**”), (i) all outstanding shares of the Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate (and no dividends shall be payable thereon, whether or not such dividends have been declared or accrued) and (ii) such shares may not be reissued by the Corporation, or (b) upon the date and time, or upon the occurrence of an event specified by vote or written consent of the holders of at least a majority of the outstanding shares of Series B-C Preferred Stock, (such date and time specified or the time of the event specified in such vote or written consent, a “**Series B-C Mandatory Conversion Time**”, and together with a Series A Mandatory Conversion Time, each a, “**Series Mandatory Conversion Time**”), (i) all outstanding shares of the Series B-C Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate (and no dividends shall be payable thereon, whether or not such dividends have been declared or accrued) and (ii) such shares may not be reissued by the Corporation; provided, however, in the case of an occurrence of a Series A Mandatory Conversion Time or Series B-C Mandatory Conversion Time as provided in this

Subsection 5.1.2 immediately prior to (and in connection with) the closing of the sale of shares of Common Stock at an Offering Price of less than the Target Price, in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, then the holders of such Series A Preferred Stock and such Series B-C Preferred Stock being so converted pursuant to this Subsection 5.1.2 shall receive the accrued but unpaid Series A Accruing Dividend, the Series B Accruing Dividend or the Series C Accruing Dividend, as the case may be, but only to the extent that the sum of the applicable Accruing Dividend payable and Offering Price does not exceed the Target Price to such holder. To the extent the amount of the applicable Accruing Dividend payable and Offering Price exceeds the Target Price, then the Preferred Stockholder shall only receive an amount of the applicable Accruing Dividend that is equal to the Target Price less the Offering Price, and shall be entitled to no other amounts of the Accruing Dividend.

5.2 Procedural Requirements. All holders of record of shares of Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Preferred Stock shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to Section 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender the certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of their certificate or certificates (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Subsection 5.2. As soon as practicable after the Mandatory Conversion Time and the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for Preferred Stock, the Corporation shall issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable on such conversion in accordance with the provisions hereof, together with cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion. Such converted Preferred Stock shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly. In the case of the occurrence of a Series Mandatory Conversion Time, the provisions of this Section 5.2 shall also apply but only to such series of Preferred Stock so electing to convert pursuant to Subsection 5.1.2.

6. Redemption.

6.1 Redemption. (a) Shares of Series B-C Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the greater of (a) (i) the Series B Original Issue Price per share, plus any Series B Accruing Dividends, accrued but unpaid thereon, whether or not declared, together with any dividends declared but unpaid thereon in the case of the Series B Preferred Stock and/or (ii) the Series C Original Issue Price per share, plus any Series C Accruing Dividend, accrued but unpaid thereon whether or not declared, together with any dividends declared but unpaid thereon in the case of the Series C Preferred Stock, and (b) the fair market value (as determined in good faith by the Board of Directors) (the "**Applicable Redemption Price**"). in three equal annual installments commencing not more than 60 days after receipt by the Corporation at any time on or after the sixth anniversary of the Series B Original Issue Date, from the holders of at least a majority of the then outstanding shares of Series B-C Preferred Stock, of written notice requesting redemption of all (but not less than all) shares of Series B-C Preferred Stock. The date of each such installment shall be referred to as a "**Series B-C Redemption Date**". On each Series B-C Redemption Date, the Corporation shall redeem, on a pro rata basis in accordance with the number of shares of each of the Series B Preferred Stock and the Series C Preferred Stock owned by each holder, that number of outstanding shares of Series B Preferred Stock and/or Series C Preferred Stock determined by dividing (i) the total number of shares of each of the Series B-C Preferred Stock outstanding immediately prior to such Series B-C Redemption Date by (ii) the number of remaining Series B-C Redemption Dates (including the Series B-C Redemption Date to which such calculation applies). If the Corporation does not have sufficient funds legally available to redeem on any Series B-C Redemption Date all shares of Series B-C Preferred Stock to be redeemed on such Series B-C Redemption Date, the Corporation shall redeem a pro rata portion of each holder's redeemable shares of such capital stock out of funds legally available therefor, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the legally available funds were sufficient to redeem all such shares, and shall redeem the remaining shares to have been redeemed as soon as practicable after the Corporation has funds legally available therefor. Notwithstanding the foregoing, at the Corporation's election (in its sole discretion), should the Corporation have funds legally available therefor, the Corporation may make payments on the redemption of the shares of Series B-C Preferred Stock on an accelerated basis by delivery of written notice to the holders of Series B-C Preferred Stock.

(b) No later than sixty (60) days following the redemption in full of the Series B-C Preferred Stock, the Corporation shall provide notice to the holders of the Series A Preferred Stock that such redemption has occurred. At any time after receipt of such notice, shares of Series A Preferred Stock shall be redeemed by the Corporation out of funds lawfully available therefor at a price equal to the greater of (a) the Series A Original Issue Price per share, plus any Series A Accruing Dividends, accrued but unpaid thereon, whether or not declared, together with any dividends declared but unpaid thereon, and (b) the fair market value (as determined in good faith by the Board of Directors) (the "**Series A Redemption Price**"), in three equal annual installments commencing not more than 60 days after receipt by the Corporation from the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, of written notice requesting redemption of all (but not less than all) shares of Series A Preferred Stock. The date of each such installment shall be referred to as a "**Series A Redemption Date**" and the Series A Redemption Date and the Series B-C Redemption Date, shall each be referred

be, for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Series B-C Preferred Stock or Series A Preferred Stock, as the case may be, represented by a certificate are redeemed, a new certificate representing the unredeemed shares of Series B-C Preferred Stock or Series A Preferred Stock, as the case may be, shall promptly be issued to such holder.

6.4 Rights Subsequent to Redemption. If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Applicable Redemption Price or Series A Redemption Price, as the case may be, payable upon redemption of the shares of Series B-C Preferred Stock or Series A Preferred Stock, as the case may be, to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that the certificates evidencing any of the shares of Series B-C Preferred Stock or Series A Preferred Stock, as applicable, so called for redemption shall not have been surrendered, dividends with respect to such shares of Series B-C Preferred Stock or Series A Preferred Stock, as applicable shall cease to accrue after such Redemption Date and all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Applicable Redemption Price or Series A Redemption Price, as applicable, without interest upon surrender of their certificate or certificates therefor.

7. Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of such Preferred Stock following redemption. The shares of Series A Preferred Stock and/or Series B-C Preferred Stock not redeemed shall remain outstanding and entitled to all rights and preferences provided herein.

8. Waiver. Any of the rights, powers, preferences and other terms of the Series A Preferred Stock set forth herein may be waived on behalf of all holders of Series A Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding. Except as may otherwise be provided for herein, any of the rights, powers, preferences and other terms of the Series B-C Preferred Stock set forth herein may be waived on behalf of all holders of Series B-C Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series B-C Preferred Stock then outstanding.

9. Notices. Any notice required or permitted by the provisions of this Article Fourth to be given to a holder of shares of Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

FIFTH: Subject to any additional vote required by the Certificate of Incorporation or Bylaws, in furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

SIXTH: Subject to any additional vote required by the Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

SEVENTH: Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

EIGHTH: Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

NINTH: To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article Ninth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

TENTH: To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

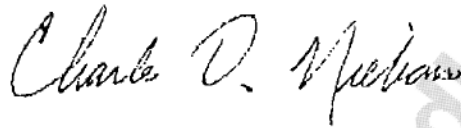
Any amendment, repeal or modification of the foregoing provisions of this Article Tenth shall not adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification.

ELEVENTH: The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “**Excluded Opportunity**” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Series B or Series C Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, “**Covered Persons**”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation.

TWELTH: The name and mailing address of the incorporator of the Corporation is:

Charles D. Niehaus
7150 Granite Circle, Suite 203
Toledo, Ohio 43617

I, THE UNDERSIGNED, being the incorporator, for the purpose of forming a corporation pursuant to the General Corporation Law, do make this Certificate of Incorporation, hereby acknowledging, declaring, and certifying that the foregoing Certificate of Incorporation is my act and deed and that the facts herein stated are true, and have accordingly hereunto set my hand this 1st day of December, 2016.



Charles D. Niehaus, Incorporator



State of Delaware

SECRETARY OF STATE
DIVISION OF CORPORATIONS
P.O. BOX 898
DOVER, DELAWARE 19903

9109407

12-02-2016

NIEHAUS WISE & KALAS LTD.
7150 GRANITE CIRCLE, SUITE 203
TOLEDO, OH 43617

ATTN: CHARLES NIEHAUS

DESCRIPTION	AMOUNT
6235630 - PEERLESS NETWORK HOLDINGS, INC. 0102S Stock Corporation	
Incorporation Fee	\$15.00
Receiving/Indexing	\$25.00
Surcharge Assessment-New Castle County	\$6.00
Page Assessment-New Castle County	\$270.00
Data Entry Fee	\$5.00
Court Municipality Fee, Wilm.	\$20.00
Expedite Fee, Same Day	\$100.00
TOTAL CHARGES	\$441.00
TOTAL PAYMENTS	\$441.00
BALANCE	\$0.00

S&DC-S/N

Statement and Designation by
Foreign Corporation

3712070

To qualify a corporation from another state or country to transact intrastate business in California, fill out this form, and submit for filing along with:

- A **\$100** filing fee (for a foreign stock corporation) or **\$30** filing fee (for a foreign nonprofit corporation), and
- A certificate of good standing, issued within the last six (6) months by the agency where the corporation was formed. **Note:** If the corporation is a nonprofit, the certificate of good standing also must indicate the corporation is a nonprofit or nonstock corporation.
- A separate, non-refundable **\$15** service fee also must be included, if you **drop off** the completed form.

Important! Corporations in California may have to pay a minimum \$800 yearly tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

FILED
Secretary of State
State of California

1pc SEP 18 2014

This Space For Office Use Only

For questions about this form, go to www.sos.ca.gov/business/be/filing-tips.htm.

Corporate Name (List the exact name of the corporation, as shown in the certificate of good standing. If the name of the corporation is not available for use in the State of California, the corporation must qualify under an assumed name. E.g., "[list the exact name] which will do business in California as [list the proposed assumed name]." For general corporate name requirements and restrictions in California, go to www.sos.ca.gov/business/be/name-availability.htm.)

① Openmarket Inc.

Corporate History

② State or foreign country where this corporation was formed: MI

Service of Process (List a California resident or a California registered corporate agent that agrees to be your agent to accept service of process in case your corporation is sued. You may list any adult who lives in California. You may **not** list your own corporation as the agent. Do not list an address if the agent is a California registered corporate agent as the address for service of process is already on file.)

③ a. CT Corporation System

Agent's Name

b. CA
Agent's Street Address (if agent is **not** a corporation) - Do not list a P.O. Box City (no abbreviations) State Zip

The corporation named in Item 1 above irrevocably consents to service of process directed to it upon the agent designated above, and to service of process on the California Secretary of State if that agent or that agent's successor is no longer authorized to act or cannot be found at the address given.

Corporate Addresses

④ a. 1390 Timberlake Manor Pkwy. Chesterfield MO 63017

Street Address of Principal Executive Office - Do not list a P.O. Box City (no abbreviations) State Zip

b. CA
Street Address of Principal Office in California, if any - Do not list a P.O. Box City (no abbreviations) State Zip

c. 1390 Timberlake Manor Pkwy. Chesterfield MO 63017

Mailing Address of Principal Executive Office, if different from 4a or 4b City (no abbreviations) State Zip

Read and sign below: This form must be signed by an officer of the foreign corporation.

Signature

Michael Saeger

Print your name here

Treasurer

Your officer title

Make check/money order payable to: **Secretary of State**

Upon filing, we will return one (1) uncertified copy of your filed document for free, and will certify the copy upon request and payment of a \$5 certification fee.

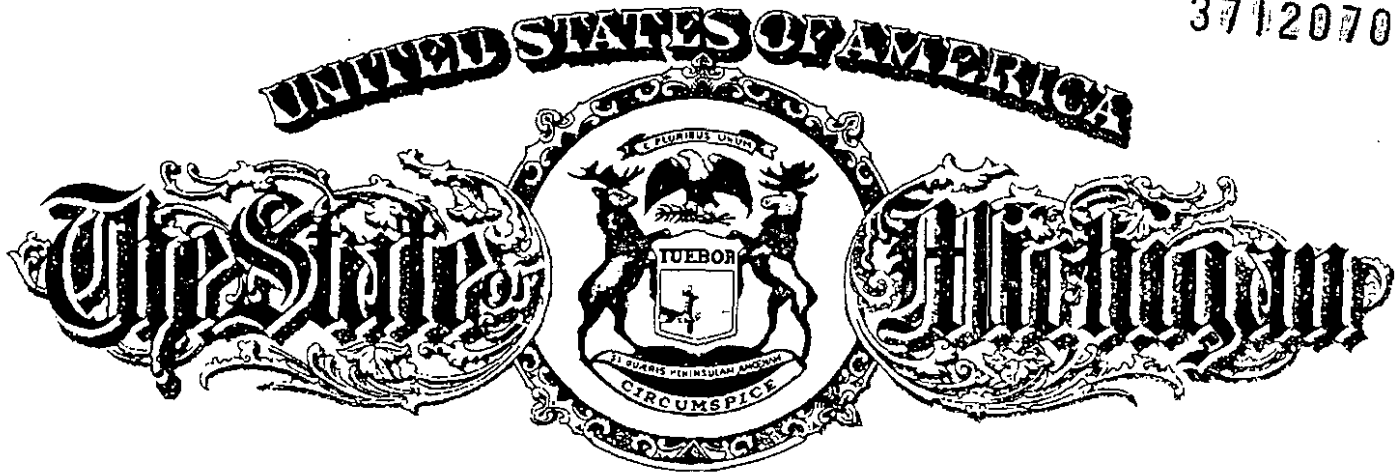
By Mail

Secretary of State
Business Entities, P.O. Box 944260
Sacramento, CA 94244-2600

Drop-Off

Secretary of State
1500 11th Street, 3rd Floor
Sacramento, CA 95814

3712070



Department of Licensing and Regulatory Affairs

Lansing, Michigan

This is to Certify That

OPENMARKET INC.

was validly incorporated on January 24, 2001, as a Michigan profit corporation, and said corporation is validly in existence under the laws of this state.

This certificate is issued pursuant to the provisions of 1972 PA 284, as amended, to attest to the fact that the corporation is in good standing in Michigan as of this date and is duly authorized to transact business and for no other purpose.

This certificate is in due form, made by me as the proper officer, and is entitled to have full faith and credit given it in every court and office within the United States.

In testimony whereof, I have hereunto set my hand, in the City of Lansing, this 28th day of August, 2014.

Alan J. Schefke, Director
Corporations, Securities & Commercial Licensing Bureau

MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES BUREAU OF COMMERCIAL SERVICES		
(Date Received) JAN 24 2001		(FOR BUREAU USE ONLY) This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.
		FILED JAN 24 2001 Administrator BUREAU OF COMMERCIAL SERVICES
Name Christopher J. Kawa, Legal Assistant Honigman Miller Schwartz and Cohn LLP Address 2290 First National Building City State Zip Code Detroit MI 48226		EFFECTIVE DATE:

Document will be returned to the name and address you enter above.
If left blank document will be mailed to the registered office.

517-59A

**ARTICLES OF INCORPORATION
FOR USE BY DOMESTIC PROFIT CORPORATION**
(Please read information and instructions on last page)

Pursuant to the provisions of Act 284, Public Acts of 1972, the undersigned corporation executes the following Articles:

ARTICLE I

The name of the corporation is: Joe Lauer, Inc.

ARTICLE II

The purpose or purposes for which the corporation is formed is to engage in any activity within the purposes for which corporations may be formed under the Business Corporation Act of Michigan.

ARTICLE III

1. The total authorized shares which the Corporation shall have authority to issue is 100,000, consisting of: (a) 40,000 shares of preferred stock, and (b) 60,000 shares of common stock, consisting of 50,000 shares of Voting Common Stock and 10,000 shares of Nonvoting Common Stock.
2. A statement of all of any of the relative rights, preferences and limitations of the shares of each class is as follows: The Board of Directors may cause the corporation to designate the shares of each class of stock to have such relative rights and preferences as shall be prescribed by resolution of the Board of Directors.

112-108040 ACK

CP

ARTICLE IV

1. The address of the registered office is:
743 Beaubien, Suite 300, Detroit, Michigan 48226
2. The mailing address of the registered office, if different than above:

3. The name of the resident agent at the registered office is: William Hannon, CPA

ARTICLE V

The name and address of the incorporator is as follows:

Name

Residence or Business Address

Christopher J. Kawa

2290 First National Building, Detroit, Michigan 48226

ARTICLE VI

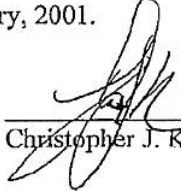
Any action required or permitted by the Act to be taken at an annual or special meeting of shareholders may be taken without a meeting, without prior notice, and without a vote, if consents in writing setting forth the action so taken, are signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted. The written consents shall bear the date of signature of each shareholder who signs the consent. No written consents shall be effective to take the corporate action referred to unless, within 60 days after the record date for determining shareholders entitled to express consent or to dissent from a proposal without a meeting, written consents dated not more than 10 days before the record date and signed by a sufficient number of shareholders to take the action are delivered to the corporation. Delivery shall be to the corporation's registered office, its principal place of business, or an officer or agent of the corporation having custody of the minutes of the proceedings of its shareholders. Delivery made to a corporation's registered office shall be by hand or by certified or registered mail, return receipt requested.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to shareholders who would have been entitled to notice of the shareholder meeting if the action had been taken at a meeting and who have not consented in writing.

ARTICLE VII

To the full extent permitted by the Michigan Business Corporation Act or any other applicable laws presently or hereafter in effect, no director of the corporation shall be personally liable to the corporation or its shareholders for or with respect to any acts or omissions in the performance of his or her duties as a director of the corporation. Any repeal or modification of this Article VII shall not adversely affect any right or protection of a director of the corporation existing immediately prior to, or for or with respect to, any acts or omissions occurring before such repeal or modification.

I, the incorporator sign my name this 23rd day of January, 2001.



Christopher J. Kawa

**MICHIGAN DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES
BUREAU OF COMMERCIAL SERVICES**

Date Received

JAN 30 2001

(FOR BUREAU USE ONLY)

This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

FILED**JAN 30 2001**

Name

Christopher J. Kawa, Legal Assistant
Honigman Miller Schwartz and Cohn LLP

Address

2290 First National Building

City

Detroit

State

MI

Zip Code

48226

Administrator
BUREAU OF COMMERCIAL SERVICES

EFFECTIVE DATE:

Expiration date for new assumed names: December 31,

Expiration date for transferred assumed names appear in Item 6

↑ Document will be returned to the name and address you enter above. ↑
If left blank document will be mailed to the registered office.

CERTIFICATE OF MERGER

**Cross Entity Merger for use by Profit Corporations, Limited Liability Companies
and Limited Partnerships**

Pursuant to the provisions of Act 284, Public Acts of 1972 (profit corporations), Act 23, Public Acts of 1993 (limited liability companies) and Act 213, Public Acts of 1982 (limited partnerships), the undersigned entities execute the following Certificate of Merger:

1. The Plan of Merger (Consolidation) is as follows:

a. The name of each constituent entity and its identification number is:

Simplewire, LLC

B76-132

Joe Lauer, Inc.

517-59A

b. The name of the surviving (new) entity and its identification number is:

Joe Lauer, Inc.

517-59A

Corporations and Limited Liability Companies provide the street address of the survivor's principal place of business:

743 Beaubien, Suite 300, Detroit, Michigan 48226

2. (Complete only if an effective date is desired other than the date of filing. The date must be no more than 90 days after the receipt of this document in this office.)

The merger (consolidation) shall be effective on the _____ day of _____, 19____.

1/31/01 108253 ACK

3. Complete for Profit Corporations only

For each constituent stock corporation, state:

Name of corporation	Designation and number of outstanding shares in each class or series	Indicate class or series of shares entitled to vote	Indicate class or series entitled to vote as a class
Joe Lauer, Inc.	50,000 Voting Common Shares No Par Value	Voting Common	N/A

If the number of shares is subject to change prior to the effective date of the merger or consolidation, the manner in which the change may occur is as follows: Not applicable.

The manner and basis of converting shares are as follows:

Each Common Share of Joe Lauer, Inc. ("Surviving Corporation") issued and outstanding shall, by virtue of the merger and without any action on the part of the holder of such Common Share of the Surviving Corporation, remain one fully paid and non-assessable Common Share of the Surviving Corporation, and the holders of such shares shall remain, at the effective time of the merger, the shareholders of the Surviving Corporation. Outstanding certificates representing Common Shares of the Surviving Corporation shall, after the effective time of the merger, continue to represent the same number of Common Shares of the Surviving Corporation, and the holders of such certificates shall have the same rights which such holders would have if such certificates had been issued after the merger by the Surviving Corporation.

The amendments to the Articles, or a restatement of the Articles, of the surviving corporation to be effected by the merger are as follows:

ARTICLE I

The name of the corporation is: Simplewire, Inc.

The plan of merger will be furnished by the surviving profit corporation, on request and without cost, to any shareholder of any constituent profit corporation.

The merger is permitted by the state or country under whose law it is incorporated and each foreign corporation has complied with that law in effecting the merger.

(Complete either part a or b for each corporation.)

- a) The Plan of Merger was approved by the majority consent of the incorporators of _____, a Michigan corporation which has not commenced business, has not issued any shares, and has not elected a Board of Directors.

(Signature of Incorporator) _____ (Type or Print Name) _____

(Signature of Incorporator) (Type or Print Name)

(Signature of Incorporator) _____ (Type or Print Name) _____

(Signature of Incorporator) (Type or Print Name)

- b) The plan of merger was approved by:

- ☐ the Board of Directors of _____, the surviving Michigan corporation, without approval of the shareholders in accordance with Section 703a of the Act.

- ☒ the Board of Directors and the shareholders of the following Michigan corporation(s) in accordance with Sections 701 and 703a of the Act:
Joe Lauer, Inc.

By 
(Signature of Authorized Officer or Agent),

By _____
(Signature of Authorized Officer or Agent)

Joe Lauer, President
(Type or print name).

(Type or print name),

Joe Lauer, Inc.
(Name of Corporation),

(Name of Corporation),

4. Complete for any Limited Liability Companies only

Check one of the following: Not Applicable. The limited liability company is the non-survivor.

- ☐ There are no changes to be made to the Articles of Organization of the surviving limited liability company.
- ☐ The amendments to the Articles, or a restatement of the Articles, of the surviving limited liability company to be effected by the merger are as follows:

The manner and basis of converting the membership interests are as follows:

All of the membership interests in Simplewire, LLC issued and outstanding shall, by virtue of the merger and without any action on the part of the holder of such membership interest, no longer be outstanding and shall be cancelled and cease to exist without any consideration, and shall not be converted into stock of Joe Lauer, Inc. or the right to receive cash or any other consideration.


The Plan of Merger was approved by the members of each domestic limited liability company in accordance with Section 705a(5) and by each constituent business organization in the manner provided by the laws in which it is organized.

For each limited liability company involved in the merger, this document is signed in accordance with Section 103 of the Act.

Signed this 27th day of January, 2001

ROOTLEVEL, INC.,
a Michigan corporation

By



(Signature of Member or Manager)

^{CEO J.L.}
John D. Lauer, President

(Type or Print Name)

Simplewire, LLC

(Name of Limited Liability Company)

**MICHIGAN DEPARTMENT OF CONSUMER & INDUSTRY SERVICES
BUREAU OF COMMERCIAL SERVICES**

(Date Received)

APR 26 2001

(For Bureau Use Only)

This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.

FILED

APR 26 2001

Name

Christopher J. Kawa, Legal Assistant
Honigman Miller Schwartz and Cohn LLP

Address

2290 First National Building

City

Detroit

State

MI

Zip Code

48226

CIS Administrator
BUREAU OF COMMERCIAL SERVICES

EFFECTIVE DATE:

↑ Document will be returned to the name and address you enter above. ↑
If left blank document will be mailed to the registered office.

CERTIFICATE OF AMENDMENT TO THE ARTICLES OF INCORPORATION

For Use by Domestic Profit and Nonprofit Corporations

(Please read information and instructions on the last page)

Pursuant to the provisions of Act 284, Public Acts of 1972 (profit corporations), or Act 162, Public Acts of 1982 (nonprofit corporations), the undersigned corporation executes the following Certificate:

1. The present name of the corporation is: Simplewire, Inc.

2. The identification number assigned by the Bureau is: 517-59A

3. Article III of the Articles of Incorporation is hereby amended to read in its entirety as follows:

ARTICLE III

1. The total authorized shares which the Corporation shall have authority to issue is 100,000, consisting of: (a) 40,000 shares of preferred stock, consisting of 10,000 shares of Series A Preferred Stock and 30,000 shares of Series B Preferred Stock, and (b) 60,000 shares of common stock, consisting of 50,000 shares of Voting Common Stock and 10,000 shares of Nonvoting Common Stock.

2. A statement of all of any of the relative rights, preferences and limitations of the shares of each class is as follows: The Board of Directors may cause the corporation to designate the shares of each class of stock to have such relative rights and preferences as shall be prescribed by resolution of the Board of Directors.

MLK/tv

1200B-GK-11734

COMPLETE ONLY ONE OF THE FOLLOWING:

4. (For amendments adopted by unanimous consent of incorporators before the first meeting of the board of directors of trustees.)

The foregoing amendment to the Articles of Incorporation was duly adopted on the ____ day of _____, 20____, in accordance with the provisions of the Act by the unanimous consent of incorporator(s) before the first meeting of the Board of Directors or Trustees.

Signed this ____ day of _____, 20____

(Signature)

(Type or Print Name and Title)

(Signature)

(Type or Print Name and Title)

(Signature)

(Type or Print Name and Title)

(Signature)

(Type or Print Name and Title)

5. (For profit and nonprofit corporations whose Articles state the corporation is organized on a stock or on a membership basis.)

The foregoing amendment to the Articles of Incorporation was duly adopted on the 20th day of April, 2001 by the shareholders if a profit corporation, or by the shareholders or members if a nonprofit corporation (check one of the following)

- ☐ at a meeting the necessary votes were cast in favor of the amendment.
- ☐ by written consent of the shareholders or members having not less than the minimum number of votes required by statute in accordance with Section 407(1) and (2) of the Act if a nonprofit corporation, or Section 407(1) of the Act if a profit corporation. Written notice to shareholders or members who have not consented in writing has been given. (Note: Written consent by less than all of the shareholders or members is permitted only if such provision appears in the Articles of Incorporation.)
- ☒ by written consent of all the shareholders or members entitled to vote in accordance with Section 407(3) of the Act if a nonprofit corporation, or Section 407(2) of the Act if a profit corporation.
- ☐ by the board of a profit corporation pursuant to section 611(2).

Profit Corporations

Signed this 20th day of April, 2001

By Joe Lauer
(Signature of an authorized officer or agent)

Joe Lauer, President

(Type or Print Name)

Nonprofit Corporations

Signed this ____ day of _____, 20____

By _____
(Signature of President, Vice-President, Chairperson or Vice-Chairperson)

(Type or Print Name)

(Type or Print Title)

Michigan Department of Labor & Economic Growth

Filing Endorsement

This is to Certify that the CERTIFICATE OF AMENDMENT - CORPORATION

for

SIMPLEWIRE, INC.

ID NUMBER: 51759A

received by facsimile transmission on February 14, 2006 is hereby endorsed

Filed on February 14, 2006 by the Administrator.

The document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.



In testimony whereof, I have hereunto set my hand and affixed the Seal of the Department, in the City of Lansing, this 14TH day of February, 2006.

, Director

Bureau of Commercial Services

To: +1-2482810532 Page 1 of 4

2006-02-14 15:14:47 (GMT)

17345276124 From: Simplewire Inc

RSC:CD-515 (Rev 12/03)

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH BUREAU OF COMMERCIAL SERVICES		
Date Received	(FOR BUREAU USE ONLY)	
	This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.	
Name Dickinson Wright PLLC, Attn: Christopher C. Maeso		
Address 38525 Woodward Avenue		
City	State	Zip Code
Bloomfield Hills	MI	48304
		EFFECTIVE DATE:

Document will be returned to the name and address you enter above.
If left blank document will be mailed to the registered office.

CERTIFICATE OF AMENDMENT TO THE ARTICLES OF INCORPORATION

For use by Domestic Profit and Nonprofit Corporations

(Please read information and instructions on the last page)

Pursuant to the provisions of Act 284, Public Acts of 1972, (profit corporations), or Act 162, Public Acts of 1982 (nonprofit corporations), the undersigned corporation executes the following Certificate:

1. The present name of the corporation is:	Simplewire, Inc.
2. The identification number assigned by the Bureau is:	517-59A

3. Article III of the Articles of Incorporation is hereby amended to read as follows:

SEE THE ATTACHED ARTICLE III

02/14/2006 11:11AM

To +1-2482810532 Page 2 of 4

2006-02-14 15:14:47 (GMT)

17345276124 From: Simplewire Inc

JC5000.5/5 (Rev. 12/03)

COMPLETE ONLY ONE OF THE FOLLOWING:**4. (For amendments adopted by unanimous consent of incorporators before the first meeting of the board of directors or trustees.)**

The foregoing amendment to the Articles of Incorporation was duly adopted on the _____ day of _____, _____, in accordance with the provisions of the Act by the unanimous consent of the incorporator(s) before the first meeting of the Board of Directors or Trustees.

Signed this _____ day of _____, _____

(Signature)

(Signature)

(Type or Print Name)

(Type or Print Name)

(Signature)

(Signature)

(Type or Print Name)

(Type or Print Name)

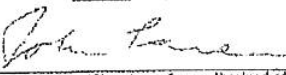
5. (For profit and nonprofit corporations whose Articles state the corporation is organized on a stock or on a membership basis.)

The foregoing amendment to the Articles of Incorporation was duly adopted on the _____ 13 _____ day of _____ February _____, 2006, by the shareholders if a profit corporation, or by the shareholders or members if a nonprofit corporation (check one of the following)

- ☐ at a meeting the necessary votes were cast in favor of the amendment.
- ☒ by written consent of the shareholders or members having not less than the minimum number of votes required by statute in accordance with Section 407(1) and (2) of the Act if a nonprofit corporation, or Section 407(1) of the Act if a profit corporation. Written notice to shareholders or members who have not consented in writing has been given. (Note: Written consent by less than all of the shareholders or members is permitted only if such provision appears in the Articles of Incorporation.)
- ☐ by written consent of all the shareholders or members entitled to vote in accordance with section 407(3) of the Act if a nonprofit corporation, or Section 407(2) of the Act if a profit corporation.
- ☐ by consents given by electronic transmission in accordance with Section 407(3) if a profit corporation.
- ☐ by the board of a profit corporation pursuant to section 611(2).

Profit Corporations and Professional Service Corporations

Signed this 14 day of February, 2006

By 
(Signature of an authorized officer or agent)

John Lauer
(Type or Print Name)

Nonprofit Corporations

Signed this _____ day of _____, _____

By _____
(Signature President, Vice-President, Chairperson or Vice-Chairperson)

(Type or Print Name)

02/14/2006 11:11AM

Attachment to the Certificate of Amendment
to the Articles of Incorporation of
Simplewire, Inc.

ARTICLE III

Section 1. CLASSES OF STOCK. The total authorized shares which the Corporation shall have the authority to issue is 100,000, consisting of: (a) 40,000 shares of preferred stock to be known as the Series A Preferred Stock, and (b) 60,000 shares of common stock, consisting of 50,000 shares of Voting Common Stock and 10,000 shares of Nonvoting Common Stock.

Section 2. PREFERRED STOCK.

The Corporation's Preferred Stock shall be known as the Series A Preferred Stock ("Series A Preferred Stock"), and the number of shares which shall constitute such class shall be Forty Thousand (40,000). The Series A Preferred Stock shall be without par value.

Each holder of Series A Preferred Stock shall be entitled to receive out of funds legally available therefore, cash dividends on each share of Series A Preferred Stock as and when declared by the Company's Board of Directors. Unless and until dividends are declared by the Board of Directors, there shall be no obligation to pay any dividends on the Series A Preferred Stock and dividends will not be cumulative. No dividends may be paid on the Common Stock unless an equal per share dividend is paid to holders of the Series A Preferred Stock at the same time as such payment is made to the holders of the Common Stock.

In the event of any voluntary or involuntary liquidation, dissolution or winding-up of the Corporation, the holders of the Series A Preferred Stock then outstanding shall be paid, out of the assets of the Corporation available for distribution to its shareholders, Twenty One Dollars (\$21.00) per share of Series A Preferred Stock (the "Series A Preference Amount") before any amount shall be paid or any assets of the Corporation shall be distributed among the holders of all Common Stock. If the assets of the Corporation available for distribution to its shareholders shall be insufficient to permit such payment in full to the holders of the Series A Preferred Stock, then the entire assets of the Corporation available for distribution to its shareholders shall be distributed ratably among the holders of the Series A Preferred Stock. After the Series A Preference Amount has been paid in full, the holders of the Series A Preferred Stock shall be entitled to receive out of the remaining assets of the Corporation the same distribution in cash or other property per share as the holders of the Common Stock are entitled to receive per share.

The holders of the Series A Preferred Stock shall not be entitled or permitted to vote on any matter required or permitted to be voted upon by the shareholders of the Corporation, except as otherwise required by the Act or in these Articles of Incorporation. So long as any shares of Series A Preferred Stock shall be outstanding, the Corporation shall not, without first having obtained the affirmative vote or written consent of the holders of not less than a majority of the outstanding shares of Series A Preferred Stock voting as a single class, amend, alter, repeal or

waive any provision of these Articles of Incorporation such that the rights of the Series A Preferred Stock are materially and adversely affected.

In any case in which the holders of the Series A Preferred Stock shall be entitled to vote, each holder shall be entitled to one vote for each share of Series A Preferred Stock held unless otherwise required by applicable law.

Section 3. COMMON STOCK.

The Corporation shall be authorized to issue 60,000 shares of Common Stock, consisting of 50,000 shares of Voting Common Stock and 10,000 shares of Non-voting Common Stock. The rights, preferences and other attributes of each share of Voting Common Stock and Non-voting Common Stock shall be identical except that the Non-voting Common Stock shall not entitle its holders to any votes. Each share of Voting Common Stock shall entitle its holder to one vote per share. Except to the extent set forth above with respect to the voting rights of the Series A Preferred Stock and as otherwise required by law, the Voting Common Stock shall have the exclusive voting powers of the shareholders of the Corporation.

BLOOMFIELD 745081

02/14/2006 11:11AM

MICHIGAN DEPARTMENT OF LABOR & ECONOMIC GROWTH BUREAU OF COMMERCIAL SERVICES		
Date Received	(FOR BUREAU USE ONLY)	
SEP 14 2006		
This document is effective on the date filed, unless a subsequent effective date within 90 days after received date is stated in the document.		
FILED		
SEP 15 2006		
Administrator BUREAU OF COMMERCIAL SERVICES		
Name	Lewis, Rice & Fingersh, L.C., Attn: Michael Deuser	
Address	500 N Broadway, Suite 2000	
City	State	ZIP Code
St. Louis	MO	63102
EFFECTIVE DATE:		

Document will be returned to the name and address you enter above.
If left blank document will be mailed to the registered office.

CERTIFICATE OF AMENDMENT TO THE ARTICLES OF INCORPORATION

For use by Domestic Profit and Nonprofit Corporations

(Please read Information and Instructions on the last page)

Pursuant to the provisions of Act 284, Public Acts of 1972, (profit corporations), or Act 162, Public Acts of 1982 (nonprofit corporations), the undersigned corporation executes the following Certificate:

1. The present name of the corporation is:	SIMPLEWIRE, INC.
2. The identification number assigned by the Bureau is:	51759A
3. Article <u>1</u> of the Articles of Incorporation is hereby amended to read as follows:	
ARTICLE I:	
The name of the corporation is: OpenMarket Inc.	

110.00 Paid 8/31/11

SW

COMPLETE ONLY ONE OF THE FOLLOWING:

4. (For amendments adopted by unanimous consent of incorporators before the first meeting of the board of directors or trustees.)

The foregoing amendment to the Articles of Incorporation was duly adopted on the _____ day of _____, _____, in accordance with the provisions of the Act by the unanimous consent of the incorporator(s) before the first meeting of the Board of Directors or Trustees.

Signed this _____ day of _____, _____

(Signature)

(Signature)

(Type or Print Name)

(Type or Print Name)

(Signature)

(Signature)

(Type or Print Name)

(Type or Print Name)

5. (For profit and nonprofit corporations whose Articles state the corporation is organized on a stock or on a membership basis.)

The foregoing amendment to the Articles of Incorporation was duly adopted on the 15th day of September, 2006, by the shareholders if a profit corporation, or by the shareholders or members if a nonprofit corporation (check one of the following)

- ☐ at a meeting the necessary votes were cast in favor of the amendment.
- ☐ by written consent of the shareholders or members having not less than the minimum number of votes required by statute in accordance with Section 407(1) and (2) of the Act if a nonprofit corporation, or Section 407(1) of the Act if a profit corporation. Written notice to shareholders or members who have not consented in writing has been given. (Note: Written consent by less than all of the shareholders or members is permitted only if such provision appears in the Articles of Incorporation.)
- ☒ by written consent of all the shareholders or members entitled to vote in accordance with section 407(3) of the Act if a nonprofit corporation, or Section 407(2) of the Act if a profit corporation.
- ☐ by consents given by electronic transmission in accordance with Section 407(3) if a profit corporation.
- ☐ by the board of a profit corporation pursuant to section 611(2).

Profit Corporations and Professional Service Corporations

Signed this 15 day of September, 2006

By _____

(Signature of an authorized officer or agent)

Thomas C. Drury (President)

(Type or Print Name)

Nonprofit Corporations

Signed this _____ day of _____, _____

By _____

(Signature President, Vice-President, Chairperson or Vice-Chairperson)

(Type or Print Name)



Secretary of State Certificate of Status

I, SHIRLEY N. WEBER, Ph.D., Secretary of State of the State of California, hereby certify:

Entity Name: OPENMARKET INC.
File Number: C3712070
Registration Date: 09/18/2014
Entity Type: FOREIGN STOCK CORPORATION
Jurisdiction: MICHIGAN
Status: ACTIVE (GOOD STANDING)

As of November 2, 2021 (Certification Date), the entity is qualified to transact intrastate business in California.

This certificate relates to the status of the entity on the Secretary of State's records as of the Certification Date and does not reflect documents that are pending review or other events that may affect status.

No information is available from this office regarding the financial condition, status of licenses, if any, business activities or practices of the entity.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of November 3, 2021.

A handwritten signature in black ink, appearing to read "Shirley N. Weber".

SHIRLEY N. WEBER, Ph.D.
Secretary of State

Certificate Verification Number: YJLGLQZ

To verify the issuance of this Certificate, use the Certificate Verification Number above with the Secretary of State Certification Verification Search available at bebizfile.sos.ca.gov/certification/index.

EXHIBIT B

CERTIFICATE OF GOOD STANDING FOR LICENSEES



Secretary of State Certificate of Status

I, SHIRLEY N. WEBER, Ph.D., Secretary of State of the State of California, hereby certify:

Entity Name: AIRUS, INC.
File Number: C3057677
Registration Date: 12/06/2007
Entity Type: FOREIGN STOCK CORPORATION
Jurisdiction: DELAWARE
Status: ACTIVE (GOOD STANDING)

As of October 20, 2021 (Certification Date), the entity is qualified to transact intrastate business in California.

This certificate relates to the status of the entity on the Secretary of State's records as of the Certification Date and does not reflect documents that are pending review or other events that may affect status.

No information is available from this office regarding the financial condition, status of licenses, if any, business activities or practices of the entity.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of October 21, 2021.

SHIRLEY N. WEBER, Ph.D.
Secretary of State

Certificate Verification Number: ZN11LWY

To verify the issuance of this Certificate, use the Certificate Verification Number above with the Secretary of State Certification Verification Search available at bebizfile.sos.ca.gov/certification/index.



Secretary of State Certificate of Status

I, SHIRLEY N. WEBER, Ph.D., Secretary of State of the State of California, hereby certify:

Entity Name: PEERLESS NETWORK OF CALIFORNIA, LLC
File Number: 200611110247
Registration Date: 04/05/2006
Entity Type: DOMESTIC LIMITED LIABILITY COMPANY
Jurisdiction: CALIFORNIA
Status: ACTIVE (GOOD STANDING)

As of October 20, 2021 (Certification Date), the entity is authorized to exercise all of its powers, rights and privileges in California.

This certificate relates to the status of the entity on the Secretary of State's records as of the Certification Date and does not reflect documents that are pending review or other events that may affect status.

No information is available from this office regarding the financial condition, status of licenses, if any, business activities or practices of the entity.



IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of October 21, 2021.

SHIRLEY N. WEBER, Ph.D.
Secretary of State

Certificate Verification Number: RL119WR

To verify the issuance of this Certificate, use the Certificate Verification Number above with the Secretary of State Certification Verification Search available at bebizfile.sos.ca.gov/certification/index.

EXHIBIT C

FINANCIAL STATEMENTS OF APPLICANTS

THIS DOCUMENT IS CONFIDENTIAL IN ITS ENTIRETY

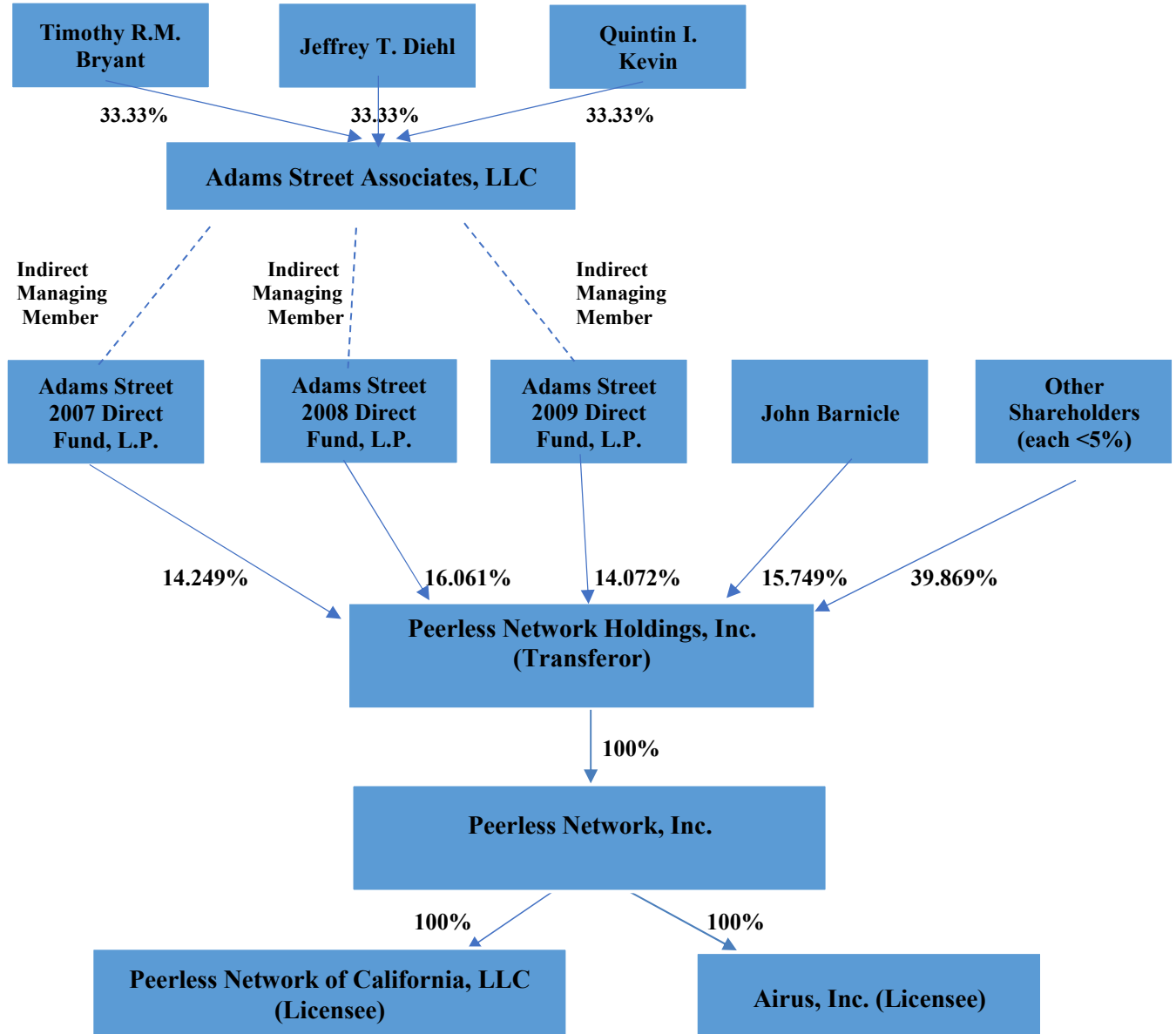
EXHIBIT D

TERMS OF TRANSACTION

THIS DOCUMENT IS CONFIDENTIAL IN ITS ENTIRETY

EXHIBIT E

PRE-TRANSACTION OWNERSHIP EXHIBIT



POST-TRANSACTION OWNERSHIP EXHIBIT

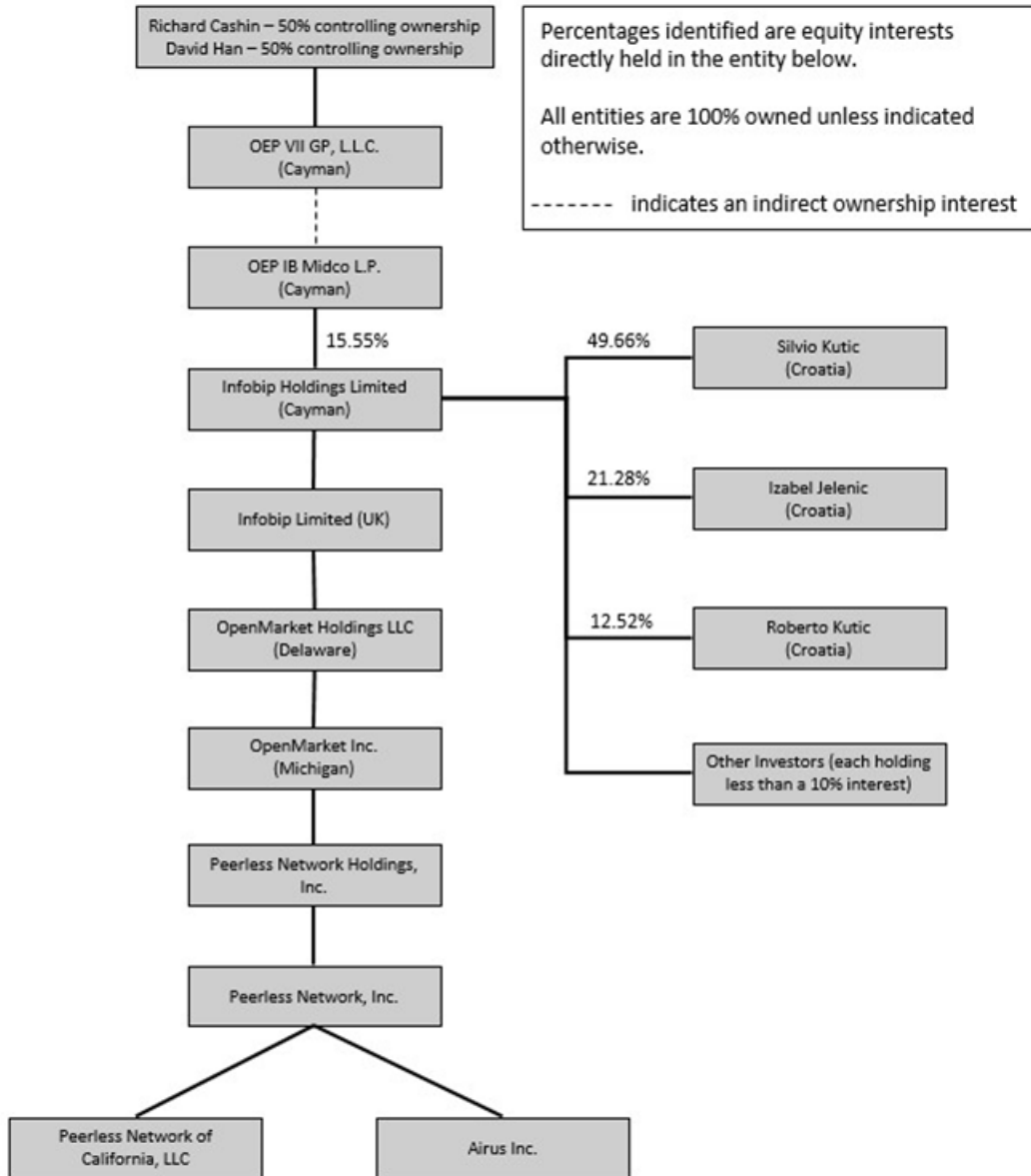


EXHIBIT F

BIOGRAPHIES OF KEY MANAGEMENT PERSONNEL

PEERLESS NETWORK KEY PERSONNEL BIOGRAPHIES

John Barnicle

President and Chief Executive Officer

John Barnicle has 30 years of leadership experience in the telecommunications industry. Prior to founding Peerless Network, John was President and Chief Executive Officer of Lynch Interactive Corp. where he led the effort to take the company private. Under his leadership the firm grew non-regulated revenue streams on a 20% annual pace and reduced the company's reliance on USF (Universal Service Fund) financial support.

Prior to Lynch Interactive Corp., John served as Co-founder, President and Chief Operating Officer of Neutral Tandem Inc., which he helped grow from inception to an annualized revenue run rate of over \$40 million in just 20 months. Under John's leadership, Neutral Tandem became EBITDA positive within 12 months of providing service. His leadership established the foundation for the company's successful Initial Public Offering in November 2007.

Prior to Neutral Tandem, John was Co-founder, President and Chief Operating Officer of Focal Communications Corp. With direct responsible for all day-to-day activities of the company, John grew Focal to over \$350M in annualized revenue in less than six years, guided the company to an operating profit in its first full year of operations and was involved in raising over \$800 million in capital during that period, including a successful IPO in July 1999. John also held executive management roles at MFS Communications, Duff and Phelps Credit Rating Company and Centel Corporation.

John earned an M.B.A. in Finance from DePaul University and a B.S. in Electrical Engineering with an emphasis on RF communications systems from the University of Illinois at Champaign.

Lisa B. Neimark

Chief Financial Officer

Lisa B. Neimark has over 30 years of technical experience in finance and accounting and extensive practical experience transforming companies through mergers and acquisitions and organic revenue growth. Lisa has driven results by advising CEOs, boards of directors, senior executives, lenders and shareholders of public and privately held companies in complex transactions and financial and operational matters. She has been responsible for leading the execution of strategic transactions throughout the United States, Canada, Latin America, Europe and Asia and is consistently recognized as a dedicated, collaborative and principled leader with strong problem-solving and critical thinking skills.

Lisa has held CFO positions at PSL North America, Palm Bay Academy, Johnson Publishing Company and other major companies. In addition, she has held executive level positions with firms such as Duff & Phelps, Macquarie Capital, Capstone Advisory Group and Ernst & Young Corporate Finance.

Lisa has a B.S. from Indiana University in Accountancy and successfully completed the Executive Program at Kellogg School of Business, Northwestern University.

Richard Knight***Executive Vice President of Sales and Marketing***

As co-founder of Peerless Network, Rick has 25 years of award-winning business building experience including launching of new technologies and products, creating local and national marketing programs, acquiring new customers and directly impacting corporate margins by increasing gross revenues. Rick has developed, sold, supported, engineered and implemented customer solutions that achieved high-margin revenues and his experience includes Fortune 500, affinity and wholesale market segments.

As Executive Vice President of Sales and Marketing for TeleGuam Holdings, Rick was responsible for developing sales and support teams and interconnections agreements while selling mobile, long distance, data and local services. Rick's efforts included the development of national, business and residential account teams focused on revenue generation while maintaining margins in excess of 75%. Rick has held senior management positions with Focal Communications Corporation and MCI.

Rick earned a M.B.A. from DePaul University and a B.A. from the University of Iowa in 1985.

Jim Brewer***Executive Vice President, Products and Technology***

Jim Brewer has more than 20 years of experience of driving results within the telecommunications industry. Jim brings extensive knowledge of designing, deploying and operating carrier-class VoIP and IMS networks and services to Peerless Network. As a co-founder of Peerless Network and Executive Vice President, Products and Technology, Jim is responsible for the product development and architecture/engineering of the Peerless voice, messaging, and UCaaS services. Jim is also responsible for the software development of the Peerless Portal, Peerless LCR and all ancillary call routing applications.

Prior to Peerless, Jim served as Manager of VoIP Engineering for Focal Communications, where he led the successful launch of the wholesale VoIP service. Following the company's acquisition by Broadwing Communications, he oversaw the VoIP engineering team and managed the integration of the Broadwing and Focal Communications networks.

Jim studied computer engineering at the University of Iowa and holds a bachelor's degree in telecommunications management from DeVry University.

Tony Hiller***Executive Vice President Operations and Engineering***

Tony Hiller brings more than 23 years of experience in the telecom industry to Peerless Network. Throughout his career, he has successfully helped teams design, optimize and operate carrier networks while maximizing performance at minimal cost. Tony is a co-founder of Peerless and serves as Executive Vice President, Engineering and Architecture. In his role, he oversees design, build, deployment and engineering of the company's network, systems and facilities. Tony co-authored several of the company's key patents.

Tony previously led teams at Level3 and Broadwing Communications overseeing network engineering, planning, architecture and internet peering. During his time at Level3, he assisted with the post-acquisition integration of multiple acquired networks, including Broadwing's. He also held key positions at Broadwing Communications, Focal Communications and Interaccess Corp.

Tony studied computer science and human computer interaction at DePaul University.

Bob Sherman

Vice President, Information Technology

Bob Sherman has over 20 years of experience in the telecommunications industry. Bob was one of the initial employees at Peerless and currently serves as Vice President, Information Technology. In his role, he is responsible for overseeing application design and development activities related to CRM, order management, CDR collection, usage rating, billing and reporting. He has extensive knowledge of the back office application infrastructure required to run a telecommunications business.

Prior to Peerless, Bob worked on various ordering, provisioning, billing and reporting systems at Level3, Broadwing Communications and Focal Communications. Prior to Focal, Bob was a senior manager in the Management Consulting and Technology Services unit of PriceWaterhouseCoopers (now IBM Business Consulting). In that role, Bob worked at several Fortune 500 companies in the transportation, retail and healthcare industries.

Bob earned a bachelor's degree in Engineering from the University of Illinois at Champaign-Urbana.

Julie Musselman Oost

Vice President of Regulatory Affairs and Contracts

Julie has 25 years of experience in the regulatory and contracts space with a demonstrated ability to manage federal, state and local regulatory and contractual issues. In her current role as Vice President of Regulatory Affairs and Contracts, Julie provides leadership and direction for Peerless' regulatory initiatives and compliance and performs a wide range of transactional activities, including contract drafting, negotiation and review with an emphasis on sales contracts, vendor contracts, inter-carrier contracts and disputes, NDAs and sales bid responses. Julie also represents Peerless in regulatory matters before government agencies, including the FCC and state public utility regulatory commissions, and in industry associations, including the North American Numbering Council (NANC).

Prior to joining Peerless, Julie spent 10 years as an economist at Kelley Drye & Warren LLP in its Chicago office where she provided economic counsel and public policy guidance to communications and energy clients on federal, state and local regulatory issues focusing on the development of briefs, testimonies and other regulatory filings. Prior to Kelley Drye, Julie was a senior policy advisor to Commissioners Karl A. McDermott and Terry S. Harvill, and an economic analyst in the policy section of the Telecommunications Division at the Illinois Commerce Commission. Julie has also worked for Argonne National Laboratory and the Center for Regulatory Studies.

Julie earned a M.S. in Regulatory Economics and a B.A. in Finance and Economics from Illinois State University in Bloomington-Normal, Illinois.

SILVIO KUTIĆ

Istarska 43 A, Vodnjan, Croatia
mail: silvio.kutic@infobip.com

PROFESSIONAL EXPERIENCE

Current Board Membership

Infobip Holdings Limited, London, UK	<i>August 2021 – Present</i>
Infobip Limited, London, UK	<i>February 2015 – Present</i>
OpenMarket Holdings LLC, Seattle, USA	<i>December 2020– Present</i>
OpenMarket Inc., Seattle, USA	<i>December 2020 – Present</i>
Infobip s.r.l., Milano, Italy	<i>October 2011 – Present</i>
Infobip Ltd., Vodnjan, Croatia	<i>April 2006 – Present</i>

Infobip Limited, London, United Kingdom <i>Chief Executive Officer (CEO)</i>	<i>2015 - Present</i>
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Key Qualifications & Responsibilities

- Driving force behind Infobip's growth and the strategic focus
- Responsible for further development of business by creating new opportunities in new markets
- Effectively managing a team of over 3300 employees in 84 jurisdictions
- Overseeing executive leadership
- Responsible for exponential growth and productivity
- Fostering open and transparent company culture and advocating a non-hierarchical work structure of togetherness

Key Achievements

- Fore fronting and disrupting the CPaaS industry, named as Mover & Shaker in Telco Innovation at the 2021 Juniper Digital Awards
- Successfully bootstrapped the company for 14 years
- Increased revenue by 39% annually in a 3-year timespan
- Secured significant strategic investment from One Equity Partners in the total amount of €300m
- Achieved company's unicorn status in 2020
- Successfully acquired US company Open Market Holdings, a leading provider of mobile messaging solutions to enterprises, for a gross cash amount of approximately \$300m
- Successfully acquired Shift, Southeast Europe's largest tech conference
- Made a strategic investment in STEMI startup, AI-based educational platform
- Successfully acquired Irish company Anam Technologies, the number one SMS firewall service provider
- Secured additional funding in the amount of \$500m through direct loan placement by funds managed by the Credit Group of Ares Management Corporation, and funds and accounts managed by BlackRock
- Initiated ESOP project and expanded it to all current and future employees

Klimax Ltd, Pula, Croatia <i>Director</i>	<i>2003-2006</i>
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- Family-owned company – predecessor of Infobip
- Managed team and developed successful business

Virtual municipality project, Croatia <i>Creator</i>	<i>2002</i>
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Local social network for citizen of the municipality

EDUCATION

UNIVERSITY OF ZAGREB
Faculty of Electrical Engineering and Computing
Master of Science

Zagreb, Croatia
1996-2003

UNIVERSITY JURAJ DOBRILA
Honorary Doctorate

Pula, Croatia
2020

LANGUAGES

Croatian and Italian: native
English: fluent

AWARDS

- Leader in the IDC MarketScape: Worldwide Communications Platform-as-a-Service (CPaaS) 2021 Vendor Assessment (May 2021), Infobip, UK.
- Best A2P SMS provider for the fourth year running by mobile operators and enterprises in ROCCO's annual Messaging Vendor Benchmarking Report
- Best CPaaS Provider of the Year, Best RCS Provider of the Year, and Mover & Shaker in Telco Innovation at the 2021 Juniper Digital Awards
- Trusted Partner role in The Global System for Mobile Communications Association's ("GSMA") Identity Revenue Initiative in 2020
- Capacity Messaging and SMS World: 4 awards in 2018
- Entrepreneur of the year 2018 award, Ernst & Young, Croatia
- Mbea best messaging solution award 2018
- Capacity media best anti-fraud innovation (2017)
- Rexpo investment of the year (2017)
- Digital Shaper of the year (2017)
- Capacity Global Carrier Awards 2016 finalist
- 2016 Canadian Telecom Employer of Choice
- Capacity Messaging and SMS World's Best A2P SMS Provider award (2015)
- Mobile Business Excellence Award 2015
- Total Telecom Africa Awards: Best Enterprise Services finalist 2015
- Sbf Youth Employer of the year - Sarajevo Business Forum Award

ŽELJKO JELENIĆ

5491158756845
Suecia 0155, 603, Santiago De Chile, Region
Metropolitana 7510114
zeljko.jelenic@infobip.com

PROFESSIONAL SUMMARY

VP General Manager with solid experience in management, supervision, investments, development, IT and customer service. Customer oriented with a strong history of leading high performance teams to meet or exceed goals. Dedicated and hardworking with an internal drive to deliver excellence. Tactical team builder with strong background in team training and development. Motivated manager with more than 20 years of experience in people management. Renowned for assessing operational needs and developing solutions to save costs, improve revenue, and drive customer satisfaction. Resourceful and well organized with excellent leadership and a record of teamwork.

SKILLS

- Projects management
- Team link
- Development staff
- Budgets and finances.
- Extremely organized
- Team leadership
- Data management
- Self motivated
- Process implementation
- Sales Analysis
- Business strategy
- Business development
- Economy
- Sightseeing
- Mobile technology

WORK HISTORY

Vice President and Treasurer • *Open Market Inc.*
Seattle, USA • January 2021 – Current

Vice President and Treasurer • *Open Market Holdings LLC*
Seattle, USA • January 2021 – Current

VP General Manager Americas • *Infobip Chile Limitada*
Santiago de Chile, Chile • July 2021 – Current

VP General Manager Americas highest administrative role in Latin America and supporting as COO North America. It acts as the main point of contact between a region and the parent company. The main objective of VP General manager is: • Coordinate and align the actions of non revenue departments in region • Provide input to the regional strategy and implement strategic directives from the headquarters in the region. • Direct leadership over the financial, legal, people, marketing and logistics functions. • Primary responsibility for financial results, customer and business development, organizational and people management, and internal management, implementation of processes in their dedicated regions. • Monitoring and control of the financial stability of the market (Income, Gross Profit (GP), Operating Expenses, Exposure). • Personnel management regarding growth, income and GP per employee, rotation, retention, succession plans, planning of salary expenses. • Managed team of 400 employees, overseeing the hiring, training and professional growth of employees.

CEO • *Infobip LLC*
Jersey City, USA • May 2017 – Current

Managing Director Americicas • Infobip Chile Limitada

SANTIAGO, REGION METROPOLITANA • July 2018 – July 2021

Managing Director Americas is the highest administrative role in the North and South American organization. It acts as the main point of contact between a region and the parent company. The main objective of a Managing Director is:

- Coordinate and align the actions of all departments in the region.
- Provide input to the regional strategy and implement strategic directives from the headquarters in the region.
- Development of commercial operations assuming direct leadership over the financial, legal, people, marketing and logistics functions.
- Responsible for customer coordination and business development, assuming primary responsibility for financial results, customer and business development, organizational and people management, and internal management, implementation of processes in their dedicated regions.
- Monitoring and control of the financial stability of the market (Income, Gross Profit (GP), Operating Expenses, Exposure).
- Personnel management regarding growth, income and GP per employee, rotation, retention, succession plans, planning of salary expenses.
- Managed team of 240 employees, overseeing the hiring, training and professional growth of employees.

Managing Director Latam • Infobip Chile Limitada

Santiago de Chile, REGION METROPOLITANA • August 2017 – July 2018

Managing Director Latam is the highest administrative role in the South American organization. It acts as the main point of contact between a region and the parent company. The main objective of a Managing Director is:

- Coordinate and align the actions of all departments in the region.
- Provide input to the regional strategy and implement strategic directives from the headquarters in the region.
- Development of commercial operations assuming direct leadership over the financial, legal, people, marketing and logistics functions.
- Responsible for customer coordination and business development, assuming primary responsibility for financial results, customer and business development, organizational and people management, and internal management, implementation of processes in their dedicated regions.
- Monitoring and control of the financial stability of the market (Income, Gross Profit (GP), Operating Expenses, Exposure).
- Personnel management regarding growth, income and GP per employee, rotation, retention, succession plans, planning of salary expenses.
- Managed team of 120 employees, overseeing the hiring, training and professional growth of employees.

Managing Director Latam • Infobip Brazil

Curitiba, Brazil • March 2013 – August 2017

Managing Director Latam is the highest administrative role in the Sur organization. It acts as the main point of contact between a region and the parent company. The main objective of a Managing Director is:

- Coordinate and align the actions of all departments in the region.
- Provide input to the regional strategy and implement strategic directives from the headquarters in the region.
- Development of commercial operations assuming direct leadership over the financial, legal, people, marketing and logistics functions.
- Responsible for customer coordination and business development, assuming primary responsibility for financial results, customer and business development, organizational and people management, and internal management, implementation of processes in their dedicated regions.
- Monitoring and control of the financial stability of the market (Income, Gross Profit (GP), Operating Expenses, Exposure).
- Personnel management regarding growth, income and GP per employee, rotation, retention, succession plans, planning of salary expenses.
- Managed team of 100 employees, overseeing employee hiring, training and professional growth.

Executive Director • Puljanka d.d

Pula, Croatia • January 2006 – January 2013

As Executive Director of a food retail company, I handled all the operational activities of the company, with a special emphasis on investment, IT and development.

In this period:

- We increased the number of employees from 350 to 550
- We increased the number of retail stores in the region by 30%
- Year-over-year revenue growth was 20-30%.

Director of Retail • Puljanka d.d.

Pula, Croatia • December 2000 – January 2006

He was in charge of 70 facilities / stores and about 350 employees of supermarket chains of food products. Dedicated to the development of new stores, IT and all the daily operations of the company.

Head of Retail • Puljanka d.d.

Pula, Croatia • October 1998 – December 2000

- Organization of work in 70 points of sale, hiring of personnel, education, business quality control, promotion work to improve sales.
- The biggest project was the introduction of the information system in shops and offices, and the transition from classic cash registers to barcode cash registers, and the whole organization around the new way of doing business.

Reception Manager Hotel Pula • Puljanka d.d.

Pula, Croatia • May 1994 – October 1998

- Head of reception of the hotel with 180 rooms.
- Organization of the hotel reception business.
- Preparation of contracts with travel agencies and price lists.
- Participation in tourism fairs.

EDUCATION**Economics master - Economy and Tourism • Juraj Dobrila University of Pula**

Pula, Croatia • 1998

Bachelor's degree in economics - Economy and Tourism • Juraj Dobrila University of Pula

Pula, Croatia • 1990

Bachelor - Mathematics And Informatics • Branko Semelić High School

Pula, Croatia • 1986

AFFILIATIONS

Since July 2002, I have been a member of the Assembly of the Tourist Office of Pula, Croatia and since 2010, a member of the Tourism Council. from Pula city. I was a member of the Croatian Chamber of Commerce, a member of the Economic Council of the Pula Chamber of Commerce and Industry and vice-president of the trade group of the Croatian Chamber of Commerce and Industry. I was a member of the Supervisory Board of Puljanka d.d. Pula and Supervisory Board of Brionka d.d.

ADDITIONAL INFORMATION

Languages: Croatian, English, Italian, Spanish and Portuguese.

Summary

Marketing and product leader with an unwavering passion for driving strategies that enable acquisition, expansion and renewal growth. Record of rapid value creation for next generation cloud, application, endpoint, IoT, identity, data loss prevention and user behavior analytics platform and services businesses.

- 15 yrs cybersecurity marketing leadership experience
- Global brand development and demand gen
- XaaS acquisition, expansion and renewal enablement
- Developer, low/no code platform, API/ecosystem GTM
- DevOps, SecOps, CSO, CISO, IT buying centers
- Cloud, network, endpoint, IoT and data security
- ML enabled user behavior and data analytics
- MBA, BSME

Experience

OpenMarket / InfoBip – Seattle, WA

2019 to Present

Global leader in CPaaS and SaaS platforms and services providing omnichannel platform connectivity for security, identity, user authentication, SIEM, IoT, customer engagement and contact center solutions.

VP Product Management and Marketing

Senior leadership team member responsible for launching and growing the OpenMarket platform and services business.

- Led global product marketing and GTM plan resulting in >30% YOY growth to >\$300M in revenue. Resulting in a successful exit and near term path to IPO on Nasdaq.
- Positioned company as a leader in CPaaS category providing a global scalable and extensible platform for api and low/no code cross channel connectivity and workflow automation.
- Defined and led SaaS brand, offerings and GTM including subscription business model, self-service solutions, templates and marketplace to significantly increase TAM, revenue contribution and valuation.
- Implemented maturity model based segmentation, channel mapping, buyer journey based propositions to extend GTM across enterprise, CSP, MSP, MSSP and mobile operator buying centers.
- Led cross functional transformation to a XaaS acquisition, expansion and renewal focused GTM. Partnered with CEO, commercial and customer leaders to optimize demand gen, ACV growth and renewal OKR's and KPI's.

Absolute – Seattle, WA

2015 to 2018

With 25,000 customers and 1 billion endpoint and edge /IoT data sources under management, Absolute is the leader in cloud based application security, data loss prevention and user behavioral analytics SaaS platforms and services

EVP Product Management and Marketing

Executive team leader responsible for launching, marketing and scaling high growth cloud and endpoint security, detection, remediation, data loss prevention and behavior analytics SaaS platform and services business

- Drove global product and marketing plan to transform SaaS platform, business model, value proposition, positioning and GTM. Achieved high growth category positioning, pipeline and > \$120M in revenue attribution.
- Initiated SaaS acquisition, expansion and renewal focussed buyer journey, content mapping, GTM, multi sourced and scored demand gen. Increased MQL/SQL conversion to achieve >40% YOY revenue and ACV growth.
- Led ABM, customer and product success campaigns to achieve a 48 NPS and 102% renewal rates. Exceeded leading KPI indicator goals including consumption, utilization and subscription services growth.
- Drove agile cross function launch, demand gen, digital marketing and ABM collaboration to increase marketing ROI, sales readiness and velocity. Exceeded conversion, CAC, acquisition, revenue and ACV KPI's.
- Launched A7 Platform featuring Reach self-service API's, workflows and libraries to increase developer adoption
- Introduced Application Persistence for application security and remediation to gain a 4X increase in TAM to \$6.5B
- Launched identity and AI enabled data loss prevention and user behavior analytics to grow expansion potential
- Led ecosystem API strategy for AI enabled data loss prevention, behavioral analytics, application persistence. Launched Absolute for CrowdStrike, Sophos, BitLocker, LogRhythm, Splunk, QRadar and 29 other providers.
- Led ISV and community engagement through developer platform, self-service API's, content and libraries
- Served as spokesperson and thought leader for investor, press, analyst and security events including RSA, BlackHat, InfoSec Europe, and Gartner Security Summit. Achieved Gartner Magic Quadrant Visionary status.

Ivanti (formerly HEAT Software) – Milpitas, CA

2013 to 2015

Global leader in unified cloud application management and security SaaS platforms and services

CMO and General Manager, Unified Cloud & Endpoint Security Business Unit

Led global marketing charter and team for NetMotion, Lumension, FrontRange and Absolute Mobile to grow to a \$250M+ SaaS platform and services business. Served as GM of the Unified Cloud and Endpoint Security business unit.

- Led marketing strategy and brand development, product marketing, partner marketing, demand generation and AR/PR to grow TAM position to \$3.7B; revenue and renewal growth to \$200M and 98% respectively
- Initiated category creation, positioning, maturity model, value proposition, GTM, customer journey, conversion and activation process across CXO, SecOps, DevOps, IT Service and Asset Management buying centers.
- Drove global multi-source and scored product launch, demand gen and topical campaigns encompassing ABM, digital marketing, content syndication, webinar, whitepaper, industry, partner and local country event execution
- Led solution based GTM plan execution reflecting buying centers, personas, journey, messaging frameworks, content mapping, field and partner readiness execution for optimal MQL, SQL and opportunity conversion
- Led launch of vulnerability and threat remediation service for ServiceNow, Microsoft, BMC, VMware and Splunk
- Drove partner and developer marketing programs for alliance, ISV, OEM, SI and MSP channel partners
- Led global AR/PR strategy and engagement. Achieved Gartner Visionary Quadrant and Cool Vendor recognition
- Drove security industry, partner, analyst and customer events including RSA, Black Hat, Gartner Security Summit and InfoSec Europe. Led thought leadership, evangelism, community and advisory engagement.
- Drove security ecosystem marketing with MSSP, SIEM, threat intelligence, DLP and security automation partners
- Led M&A value creation strategy; due diligence and integration of NetMotion, Lumension and FrontRange

WatchGuard – Seattle, WA

2007 to 2013

Leading global provider of next generation firewall and unified threat management platforms and services

Vice President of Marketing and Product Management

Executive team leader responsible for building and executing a global marketing strategy, teams and campaigns to achieve successive double digit YOY growth performance to \$200M+ in revenue

- Led global brand development, product management, marketing and demand gen to acquire 700K customers
- Captured Infonetics #1 category market share position over 6 consecutive years. Achieved multiple Gartner Magic Quadrant Leader placements and over 60 industry awards from top tier analyst and press organizations.
- Launched LiveSecurity, OPSWAT enabled SSL VPN, application control, advanced persistent threat, SecureCloud, data loss prevention and URL reputation services to drive double revenue and ACV growth
- Led global channel recruitment and readiness to grow and support over 14,000 partners in 120 countries
- Increased worldwide press and social marketing efficacy resulting in an 11x increase in top tier business, trade and social media articles. Achieved a multitude of comparative, product of the year and five star review wins.
- Drove global marketing automation and multi sourced lead scoring campaigns to significantly improve MQL, SQL and close conversion rates. Increased customer renewals, upgrades and cross sell contribution by 51%.
- Initiated global content management and syndication across microsites, partner, customer and support portals
- Directed digital, social, SEO, SEM campaigns resulting in 39% YOY growth in search and site traffic. Led launch of partner site syndication resulting in extending content through over 5K additional sites.
- Evangelized platform vision, strategy and propositions across industry, analyst, partner and customer audiences including Gartner Security Summit, Gartner IAM Summit, Gartner Symposium, BlackHat, RSA, InfoSec Europe.

Microsoft – Redmond, WA

2002 to 2007

Windows Mobile and Embedded

Director of Marketing

Leadership team member responsible for building and scaling enterprise and developer marketing from incubation to a global \$1B business unit comprised of mobile platforms, security, devices and applications

- Drove WW enterprise, SMB and developer launches and marketing for Windows Mobile brand, Windows Mobile OS, Office Mobile, Communicator Mobile, Windows Live for Mobile and Dynamics CRM for Windows Mobile
- Led Microsoft-wide Enable Your Mobile Workforce GTM campaign for mobile messaging, UC, ERP and CRM business solutions. Created user personas, buyer journey and content to drive global response and conversion.
- Appointed Business Group Liaison to Microsoft executive and WW field leadership teams. Led cross business group strategy review, priority setting, GTM, field readiness and global account customer engagement
- Recruited and directed over 100 FTE WW subsidiary marketing, solution specialist and global accounts teams
- Led enterprise readiness and launches with 68 mobile operators, 27 ODM/OEM's and ISV's in 120 subsidiaries
- Initiated joint Windows, Office, Office Communications Server, Exchange, Dynamics CRM, Bing, Windows Server and SQL marketing and GTM. Launched Mobile Device Manager for System Center.
- Led mobile Infrastructure Optimization launches and GTM featuring Hosted Exchange, Mobile Device Management for SCCM, Exchange ActiveSync, Windows Server and SQL solutions
- Drove Mobile and Embedded Developer program to accelerate enterprise and ISV developer platform adoption
- Executed successful participation in Microsoft Executive Circle, Global Accounts and CIO Summit, Gartner Research Board, Gartner Symposium/ITxpo, Gartner Catalyst, Mobile World Congress and CTIA events

Applied Inference – Bellevue, WA**2000 to 2002**

Early innovator of applied machine learning and predictive analytics based security solutions. Acquired by InfoUSA.

Vice President of Marketing

Member of executive team driving marketing strategy and execution of predictive analytics platform and subscriptions

- Introduced cloud hosted data and solution template subscription services to accelerate product adoption
- Increased market awareness through company naming, branding, competitive positioning and launch
- Developed product strategy, roadmap and requirements product plans. Developed direct, reseller, service provider, CRM and marketing automation channel requirements.

N2H2 – Seattle, WA**1998 to 2000**

Global market share leader in hosted enterprise content, filtering and safe search security subscription services. Successful IPO on NASDAQ. Acquired by McAfee.

Director, Product Marketing

Led product marketing contributing to over 100% annual growth and 56% market share

- Led business segment, EMEA and APAC market entry resulting in 40% revenue contribution
- Developed MSP channels and go to market plan. Acquired 27M users via direct and with partner programs.
- Led SEC filing positioning, investor, press and analyst relations for a successful \$65M IPO on NASDAQ

Education**MBA**

Cox School of Business
Southern Methodist University

BS in Mechanical Engineering

University of Portland

EXHIBIT G

AIRUS NAME CHANGE NOTIFICATION



May 8, 2014

Via Electronic Mail: telcofiling@cpuc.ca.gov

California Public Utility Commission
Director, Communications Division
505 Van Ness Ave.
San Francisco, CA 94102

Re: Company Name Change: IntelPeer, Inc. to Airus, Inc.

Dear Sir or Madam,

Please accept this letter as IntelPeer, Inc.'s request to change its corporate name to Airus, Inc. IntelPeer, Inc. is authorized to provide facilities-based and resold local exchange telecommunications services and intrastate interexchange services pursuant to authority granted by the Commission in Docket No. A0910008, Carrier #U-7175C. This name change is not an element of a larger transaction. No changes have been made to the Company's corporate organization or ownership. Moreover, the change of the Company's name does not affect the rates, terms and conditions under which IntelPeer's customers would receive service. Importantly, IntelPeer currently does not have end user communications customers in the State of California. The Company requests that its authorization in California be reissued or otherwise revised to reflect its new name.

Airus is a Delaware corporation, registered with the California Secretary of State to transact business as a foreign corporation. A copy of the Company's amended formation documents is appended as Attachment 1. A copy of the Company's amended foreign corporate qualification document is also provided in Attachment 1. Attachment 2 contains the Advice Letter Filing Summary Sheet. Attachment 3 is the Regulatory/Official Contact Information Update Request form.

Revised copies of the Company's approved tariffs in California are appended as Attachment 3. The tariff material mirrors what is currently on file with the Commission.

The Company information should be amended to the following:

Airus, Inc.

May 8, 2014
Page Two

840 South Canal, 7th Floor
Chicago, IL 60607
Contact: VP, Regulatory Affairs
Phone: 312-878-4160
Customer Service: 312-878-4162
Fax: 312-757-4646
Email: regulatory@airustel.com

In the event that the Company needs to take any further action to effectuate this name change or if there are any questions regarding this letter, please contact the undersigned at 312.878.4164 or via email at regulatory@airustel.com.

Please date-stamp and return the enclosed copy of this letter in the envelope provided as evidence of the filing. Thank you in advance for your assistance with this matter.

Cordially,

Julie Musselman Oost
*Vice President, Regulatory Affairs and Contract
Management*

Attachments

Attachment 1

Amended Delaware Formation Documents

Amended State Qualification Documents

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "INTELEPEER, INC.", CHANGING ITS NAME FROM "INTELEPEER, INC." TO "AIRUS, INC.", FILED IN THIS OFFICE ON THE TWELFTH DAY OF DECEMBER, A.D. 2013, AT 4:36 O'CLOCK P.M.

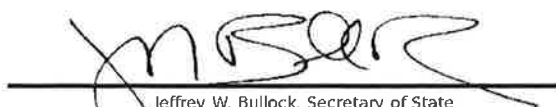
A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

4231218 8100

131418827

You may verify this certificate online
at corp.delaware.gov/authver.shtml




Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 1010399

DATE: 12-24-13

**CERTIFICATE OF AMENDMENT TO
AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
INTELEPEER, INC.**

INTELEPEER, INC., (the “*Corporation*”) a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “*DGCL*”),

DOES HEREBY CERTIFY:

FIRST: The name of the Corporation is IntelPeer, Inc. and that this Corporation was originally incorporated pursuant to the DGCL on October 5, 2006 under the name Voex, Inc. An Amended and Restated Certificate of Incorporation of the Corporation was filed with the Secretary of State of Delaware on January 31, 2012. A Certificate of Merger was filed with the Secretary of State of Delaware on July 23, 2012 which amended the Amended and Restated Certificate of Incorporation of the Corporation.

SECOND: That the Board of Directors duly adopted resolutions proposing to amend the Amended and Restated Certificate of Incorporation, declaring said amendment to be advisable and in the best interests of this Corporation and its stockholders, and authorizing the appropriate officers of this Corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment is as follows:

RESOLVED, that Article I of the Amended and Restated Certificate of Incorporation of this Corporation be amended and restated in its entirety as follows:

“ARTICLE I

“The name of this Corporation is Airus, Inc. (the “*Corporation*”).”

THIRD: The foregoing amendment was approved by the holders of the requisite number of shares of said Corporation in accordance with Sections 228 and 242 of the DGCL.

FOURTH: The foregoing amendment has been duly adopted in accordance with Section 242 of the DGCL.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, IntelPeer, Inc. has caused this Certificate of Amendment of Certificate of Incorporation to be signed by its President this 12th day of December, 2013.

INTELEPEER, INC.

By: 
John Barnicle
President

*Signature page to
Certificate of Amendment to
Amended and Restated
Certificate of Incorporation of
IntelPeer, Inc.*

State of California
Secretary of State

NAME CHANGE
CERTIFICATE OF QUALIFICATION

C3057677

I, DEBRA BOWEN, Secretary of State of the State of California, hereby certify that on the **7th day of February 2014**, there was filed in this office an Amended Statement and Designation by Foreign Corporation whereby the corporate name of **INTELEPEER, INC.**, a corporation organized and existing under the laws of **Delaware**, was changed to **AIRUS, INC.**. This corporation complied with the requirements of California law in effect on that date for the purpose of qualifying to transact intrastate business in the State of California and as of said date has been and is qualified and authorized to transact intrastate business in the State of California, subject however, to any licensing requirements otherwise imposed by the laws of this State.

IN WITNESS WHEREOF, I execute
this certificate and affix the Great Seal
of the State of California this day of
February 13, 2014.



Debra Bowen

DEBRA BOWEN
Secretary of State

Attachment 2

Advice Letter Filing Summary Sheet

**CALIFORNIA PUBLIC UTILITIES
COMMISSION**
**Advice Letter Filing Summary Sheet
(PAL)**

(Date Filed / Received Stamp by CPUC Industry Division)

Date AL served on parties: _____

Company Name: IntelPeer, Inc.

CPUC Utility Number U - 7175C

Address: 840 South Canal, 7th Floor

☐ GRC-LEC ☒ URF-Carrier ☐ Other

City, State, ZIP:: Chicago, Illinois 60607

☐ Commission Resolution Requested

☐ Carrier of Last Resort (See D.96-10-066)

Filing AL #: 7 Requested Effective Date: Upon filing

AL Tier I ☐ II ☐ III ☐

Name:

Email Address:

Phone No.:

Fax No.:

Filer

Julie Oost

regulatory@airustel.com

312-878-4162

312-757-4646

Certif.

No. Tariff
Sheets: _____

(Name, email address & Phone and FAX numbers *are Required for "Filer"*)

Tariff Schedules: _____ Keyword: Carrier Information Changes _____

(see keyword list on reverse)

For Contract Keyword, Type: Government ☐ Other ☐ Date Executed _____ Contract Total Rev (\$) _____

Subject of filing: Corporate name change from IntelPeer, Inc. to Airus, Inc.

(Service(s) included)

Authorization for filing: _____

(Resolution #, Decision #, etc.)

Affected services: _____

(Other services affected, pending or replacement AL filings)

Rate Element(s) affected *and* % change: _____

(Non-recurring and / or recurring)

☐ Customer Notice Required (if so, please attach)

Notes/Comments: _____

(Other information & reference to advice letter, etc.)

File Protest and/or Correspondence to:

Director, Communications Division
505 Van Ness Ave., San Francisco, CA 94102
and if you have email capability, ALSO email to:

TD_PAL@cpuc.ca.gov

Protest also must be served on utility:

(see utility advice letter for more information)

GRC-LEC = Cost of Service LEC Carrier

URF-Carrier = Uniform Regulatory Framework Carrier
(see D.06-08-030/D.07-09-019)

OTHER = Wireless (CMRS) Carrier

(FOR CPUC USE ONLY)

- ☐ Resolution Required
☐ Executive Action Resolution Req'd.
☐ TD Suspension on: ____ / ____ / ____
☐ Comm. Suspension on: ____ / ____ / ____

Resolution No.: T - _____

Rev. 09/24/07

Supv. / Analyst _____ / _____

Due Date to Supv.: _____

Analyst Completion Date: _____

Supervisor Approval Date: _____

AL / Tariff Effective Date: _____

Notes: _____

CALIFORNIA PUBLIC UTILITIES COMMISSION

KEYWORD LIST FOR TELECOMMUNICATIONS UTILITY ADVICE LETTER FILINGS

(Revised June 30, 2008)

May 8, 2014
Page Five

Attachment 3

Regulatory/Official Contact Information Update Request

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



Regulatory/Official Contact Information Update Request

The Communications Division (CD) maintains contact information for all telecommunications carriers certificated by the California Public Utilities Commission (Commission) to provide telecommunications services in California. **The Commission will use this information for its official mailings and contacts, primarily through e-mail.** Please return the completed form by e-mail to telcofiling@cpuc.ca.gov.

Legal Name: Airus, Inc. f/k/a IntelPeer, Inc.

DBA: _____

Utility Identification Number: U- 7175 -C

☒ **CHANGE OF CONTACT INFORMATION**

1. Name/Department: Regulatory Department Title: VP, Regulatory Affairs and Contract Mgt
2. E-Mail Address: regulatory@airustel.com
3. Address: 840 South Canal St, 7th Floor City: Chicago State: IL Zip Code: 60607
4. Telephone: (312) 878-4164 Fax: (312) 757-4646
5. Customer Service Telephone Number: (312) 878-4162
6. Web-Site Address: In progress

I, John Barnicle, hereby certify that I am an authorized representative of the above carrier, and to the best of my knowledge and belief the above information is true, accurate, and correct.

Authorized by: Airus, Inc.

Date: _____

Title: President and Chief Executive Officer Phone: (312) 878-4160 Email Address: regulatory@airustel.com

PLEASE FILE AN ADVICE LETTER TO FACILITATE THE FOLLOWING REQUESTS:

Information regarding filing an Advice Letter is available at

<http://www.cpsc.ca.gov/PUC/Telco/Information+for+providing+service/pal.htm>

1. **CHANGE OF NAME.** To change your legal name and/or fictitious name.
2. **CONSOLIDATION OF UTILITY IDENTIFICATION NUMBERS.** If you, a single entity, have been assigned more than one utility identification number, CD encourages you to consolidate these numbers into one. This consolidation would not change your authorities to do business in California but would assist the Commission in identifying you as one single entity. You may initiate the consolidation request by filing an Advice Letter with the Commission and providing the following information:
 - Surviving Legal Name and Utility Identification Number
 - Disappearing Legal Name(s) and Utility Identification Number(s)
3. **CANCELLATION OF AUTHORITY.** If you no longer conduct business and have no customers in California, you may initiate a cancellation of authority by filing an Advice Letter with the Commission and providing the following information:
 - Legal Name and Utility Identification Number,
 - Date that operations ceased, and
 - A copy of last Transmittal form and Fee Statement for PUC Utilities Reimbursement Account

May 8, 2014
Page Six

Attachment 4

Replacement Tariff Materials

EXHIBIT H

AIRUS AND WAVENATION VOIP REGISTRATIONS

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



VOIP Registration

Interconnected VOIP providers are required to register in order to submit CPUC public purpose program surcharges. VOIP providers must complete the information on this sheet and return to telcofiling@cpuc.ca.gov

You will be assigned an ID number that must be used to submit the surcharges; the ID will be sent to you by e-mail.

1. The legal name of the business offering such service. WaveNation, LLC
2. Any fictitious or other names under which such service will be offered. N/A
3. The applicant's Federal Communications Commission Registration Number 0024-1875-69
4. The local business address, if any. N/A

5. The home office business address if different than the local business address.

222 South Riverside Plaza, Suite 2730, Chicago, IL 60606

6. The name and address of the designated agent for service of process.

Corporation Service Company, 2730 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833

7. Name, title, mailing address, e-mail address, and telephone number of the person to be contacted regarding the reported information. Mark Lammert c/o Compliance Solutions, Inc.

740 Florida Central Parkway, Suite 2028, Longwood, FL 32750

Email – mark@csilongwood.com Phone: 407-260-1011 Fax: 407-260-1033

8. The identity of the directors and principal officers of the business.

President – John Barnicle, Secretary – Doug Lee

9. Names of all affiliated companies and their relationship, indicating if the affiliate is a regulated public utility. N/A

10. Telephone numbers to which service or other customer complaints should be directed.

844-662-9283

For CPUC Use Only

UCS ID Number _DVS - 1365 Issued by KYI Date 6/1/15

Subject: VOIP Registration for Airus Inc

Date: Monday, March 30, 2015 at 3:44:44 PM Central Daylight Time

From: Yang, Kenneth

To: Jodie Grimshaw

CC: Carlin, Geraldine V., Figueroa, Carlos, Cerezo, Ildefonsa

To Jodie Grimshaw,

Airus Inc's VOIP provider number is:

U-1348-C

The type of utility is "DVS" (Digital Voice Service)

After registration, please contact Carlos Figueroa at 415-703-1993 for further instructions for reporting and remitting of surcharges.

Regards,
Kenneth Yang
Regulatory Analyst
415-703-1562